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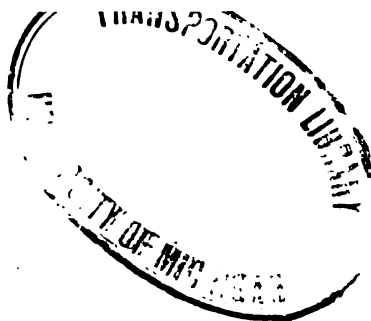
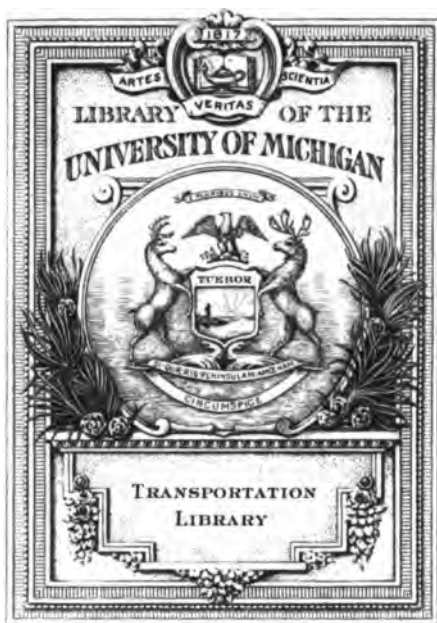
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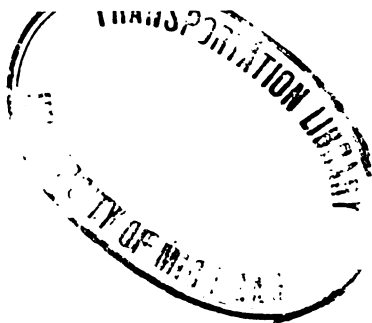
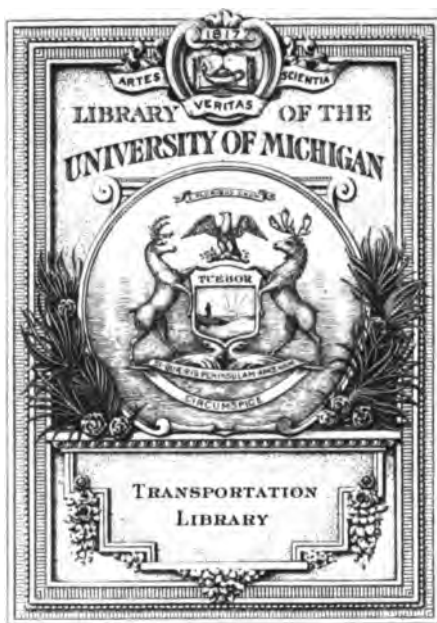
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**INTERSTATE COMMERCE COMMISSION REPORTS**

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**VOLUME 52**

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**DECISIONS OF THE  
INTERSTATE COMMERCE COMMISSION  
OF THE UNITED STATES**

**DECEMBER, 1918, TO APRIL, 1919**

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**REPORTED BY THE COMMISSION**

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**WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1919**





## INTERSTATE COMMERCE COMMISSION.

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March 17, 1919, COMMISSIONER DANIELS's term as chairman expired; on that date COMMISSIONER AITCHISON became chairman.

December 31, 1918, COMMISSIONER HARLAN's term expired.

February 17, 1919, JOSEPH B. EASTMAN became a commissioner.

■

52 I. C. C.

## CONTENTS.

---

	Page.
Members of the Commission .....	ii
Table of cases reported .....	v
Table of cases cited .....	xvii
Opinions of the Commission .....	1
Cases disposed of without printed report, with table .....	741
Supplemental reparation orders .....	749
Table of commodities .....	751
Table of localities .....	757
Index Digest .....	777
52 I. C. C. <span style="float: right;">III</span>	

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**IV**

## TABLE OF CASES REPORTED.

[NOTE.—“Et al.” in parentheses indicates other complainants or defendants, as in subnumbers or other cases, reported in same opinion.]

	Page.
Abeles v. A. & W. Ry. Co .....	73
Aberdeen & Rockfish R. R. Co., Acme Belting Co. v .....	15
Abilene & Southern Ry. Co.:	
New Orleans Joint Traffic Bureau v .....	23
Public Utilities Commission of Kansas v .....	198
Acme Belting Co. v. A. & R. R. Co. ....	15
Adams Express Co. v. Northwestern Trading Co. (Inc.) v .....	552
Aetna Explosives Co. v.:	
A. G. S. R. R. Co. ....	235, 423
C. & E. I. R. R. Co. ....	26, 393
Director General of Railroads .....	505
L. & N. R. R. Co. ....	391
P. R. R. Co. ....	173
Alabama & Vicksburg Ry. Co., Shreveport Chamber of Commerce v .....	105
Alabama Central R. R. Co., Cleveland Lumber Co. v .....	159
Alabama Central Ry., Buffalo Lumber Exchange and Buffalo Chamber of Commerce v .....	31
Alabama Great Southern R. R. Co.:	
Aetna Explosives Co. v .....	423
Carey Co. v .....	484
Chattanooga River Brick Co. v .....	337
Holt & Odell, as Receivers of Aetna Explosives Co. v .....	235
Joseph Iron Co. v .....	22
Alcolu R. R. Co., Pine Plume Lumber Co. v .....	541
Alexandria & Western Ry. Co., Abeles v .....	73
Alkire-Smith Auto Co. v. A., T. & S. F. Ry. Co. ....	507
American Agricultural Chemical Co. v. C. R. R. Co. of N. J ..	550
American Ry. Express Co., Public Service Commission of Washington v .....	266
Anheuser-Busch Brewing Asso. v. C., R. I. & P. Ry. Co. ....	555
Ann Arbor R. R. Co., Harrisonburg Milling Co. v .....	63
Aransas Harbor Terminal Ry. Co., Natchez Chamber of Commerce v .....	558
52 I. C. C.	

	Page.
Arizona Eastern R. R. Co., California Wholesale Potato Dealers Asso. <i>v.</i> .....	334
Arkansas & Louisiana Midland Ry. Co., Natchez Chamber of Commerce <i>v.</i> .....	105
Arkansas, Louisiana & Gulf Ry. Co., Natchez Chamber of Commerce <i>v.</i> .....	105
Armour & Co. <i>v.</i> E. P. & S. W. Co. ....	240
Armstrong <i>v.</i> N. Y., P. & N. R. R. Co. ....	249
Atchison, Topeka & Santa Fe Ry. Co.:	
Alkire-Smith Auto Co. <i>v.</i> .....	507
Bute Co. <i>v.</i> .....	380
Chanute Refining Co. <i>v.</i> .....	593
Chicago Live Stock Exchange <i>v.</i> .....	209
Coffeyville Mercantile Co. <i>v.</i> .....	497
Horst Co. (et al.) <i>v.</i> .....	356
Iola Cement Mills Traffic Asso. <i>v.</i> .....	225
Natchez Chamber of Commerce <i>v.</i> .....	558
Nephi Plaster & Mfg. Co. <i>v.</i> .....	433
Public Utilities Commission of Colorado <i>v.</i> .....	439
Savage Tire Co. <i>v.</i> .....	499
Standard Oil Co. (California) <i>v.</i> .....	525
Texas Cement Plaster Co. <i>v.</i> .....	293
Union Traction Co. <i>v.</i> .....	281
Atlantic City R. R. Co., Lillienthal Bros. <i>v.</i> .....	356
Atlantic Coast Line R. R. Co., Smith-Connor Hay & Grain Co. <i>v.</i> .....	331
Atlas Portland Cement Co. <i>v.</i> :	
C., M. & St. P. Ry. Co. ....	225
N. & B. R. R. Co. ....	387
Baker Box Co. <i>v.</i> L. I. R. R. Co. ....	1
Baltimore & Ohio R. R. Co.:	
Commercial Club of Omaha <i>v.</i> .....	255
Sherer-Gillett Co. <i>v.</i> .....	3
Baumbach-Reichel Co. <i>v.</i> S. P. Co. ....	356
Bayless Co. <i>v.</i> K. C. S. Ry. Co. ....	10
Bernard, Judae & Co. <i>v.</i> C., M. & St. P. Ry. Co. ....	361
Betts <i>v.</i> Director General of Railroads .....	519
Bicking Paper Mfg. Co. <i>v.</i> P. R. R. Co. ....	84
Big Sandy & Cumberland R. R. Co. ....	347
Bills of Lading .....	671
Boise Commercial Club <i>v.</i> O. S. L. R. R. Co. ....	375
Boston & Maine R. R., Graustein <i>v.</i> .....	269
Brandon <i>v.</i> N. Y., P. & N. R. R. Co. ....	249
Bright-Brooks Lumber Co. <i>v.</i> H. & B. R. R. & L. Co. ....	545
British Columbia Hop Co. <i>v.</i> S. P. Co. ....	356

	Page.
Buffalo & Susquehanna R. R. Corp., Central Pennsylvania Lumber Co. <i>v.</i> .....	329
Buffalo Chamber of Commerce <i>v.</i> A. C. Ry. ....	31
Buffalo Lumber Exchange <i>v.</i> A. C. Ry. ....	31
Building and Roofing Paper and Paper Board Rates .....	84
Burger Bros. Co. <i>v.</i> N. W. P. R. R. Co. ....	356
Bute Co. <i>v.</i> A., T. & S. F. Ry. Co. ....	380
Cabin Creek Consolidated Coal Co. <i>v.</i> C., H. & D. Ry. Co. ....	181
Cain & Co. <i>v.</i> S. P. Co. ....	356
California Wholesale Potato Dealers Asso. <i>v.</i> A. E. R. R. Co. . .	334
Canadian Pacific Ry. Co., Portland Traffic & Transportation Asso. <i>v.</i> .....	167
Carey Co. <i>v.</i> A. G. S. R. R. Co. ....	484
Cement from Ada, Okla. ....	225
Cement from Duluth, Minn., Mason City and Des Moines, Iowa, to Stations on the Midland Continental Railroad .....	225
Cement Between Points in Illinois and Points in Minnesota and Other States .....	225
Cement to International Falls, Minn., No. 2 .....	225
Cement to Iowa Points .....	225
Cement from Mason City, Iowa .....	225
Cement from Mason City, Iowa, and Other Points .....	225
Cement from Mason City, Iowa, to Beach, N. Dak. ....	225
Cement to Nebraska Stations .....	225
Cement to Sallisaw .....	225
Cement Between Points in Western Trunk Line Territory and Between Points in Western Trunk Line Territory and Adjacent Territories .....	225
Central California Traction Co., Worcester Brewing Corp. (et al.) <i>v.</i> .....	356
Central Pennsylvania Lumber Co. <i>v.</i> :	
B. & S. R. R. Corp. ....	329
S. & N. Y. R. R. Co. ....	21
Central R. R. Co. of New Jersey:	
American Agricultural Chemical Co. <i>v.</i> .....	550
Hite & Rafetto <i>v.</i> .....	344
Jacks <i>v.</i> .....	356
Certain-Teed Products Corp. <i>v.</i> P. R. R. Co. ....	84
Chamber of Commerce of—	
Buffalo <i>v.</i> A. C. Ry. ....	31
Natchez <i>v.</i> :	
A. H. T. Ry. Co. (et al.) .....	558
L. & A. Ry. Co. (et al.) .....	105
Shreveport <i>v.</i> A. & V. Ry. Co. ....	105

	Page.
Chanute Refining Co. v. A., T. & S. F. Ry. Co.....	593
Chatfield Mfg. Co. v. P. R. R. Co.....	84
Chatham, Wallaceburg & Lake Erie R. R., Larowe Milling Co. v.....	145
Chattanooga River Brick Co. v. A. G. S. R. R. Co.....	337
Chicago & Eastern Illinois R. R. Co.:	
Aetna Explosives Co. v.....	26
Holt & Odell, as Receivers of Aetna Explosives Co.....	393
Chicago & North Western Ry. Co.:	
Chicago Portland Cement Co. v.....	225
Refinite Co. v.....	548
Stielow Bros. Co. v.....	339
Wisconsin Granite Co. v.....	330
Chicago, Burlington & Quincy R. R. Co.:	
Feeders' Supply Co. v.....	353
Kansas City Hay Dealers' Asso. v.....	408
Chicago Live Stock Exchange v. A., T. & S. F. Ry. Co.....	209
Chicago, Milwaukee & St. Paul Ry. Co.:	
Bernard, Judae & Co. v.....	361
Mobridge Grocery Co. v.....	307
Newaygo Portland Cement Co. (et al.) v.....	225
Portland Traffic & Transportation Asso. v.....	169
Rosenwald (et al.) v.....	356
Waukesha Lime & Stone Co. v.....	503
Chicago Portland Cement Co. v. I. C. R. R. Co. (et al.).....	225
Chicago, Rock Island & Pacific Ry. Co.:	
Anheuser-Busch Brewing Asso. v.....	555
Doyle Kidd Dry Goods Co. v.....	18
Marquette Cement Mfg. Co. v.....	225
Nashville Roller Mills v.....	491
Southwestern Paper Co. v.....	39
Wheeler Lumber Bridge & Supply Co. v.....	370
Chicago, St. Paul, Minneapolis & Omaha Ry. Co.:	
Gamble-Robinson Co. v.....	523
Page & Hill Co. v.....	495
Cincinnati, Hamilton & Dayton Ry. Co., Cabin Creek Consolidated Coal Co. v.....	181
Cleveland Lumber Co. v. A. C. R. R. Co.....	159
Coffeyville Mercantile Co. v. A., T. & S. F. Ry. Co.....	497
Colorado & Southern Ry. Co., Rapson Coal Mining Co. v.....	164
Colorado Public Utilities Commission v. A., T. & S. F. Ry. Co..	439
Commercial Club of—	
Boise v. O. S. L. R. R. Co.....	375
Omaha v. B. & O. R. R. Co.....	255

	Page.
<b>Crowe &amp; Co. v. N. P. Ry. Co.</b> .....	351
<b>Crown Willamette Paper Co. v. H. &amp; B. V. Ry. Co.</b> .....	176
<b>Curry Grocery Co. (Inc.) v. S. Ry. Co.</b> .....	373
<b>Delaware, Lackawanna &amp; Western R. R. Co., Naylor &amp; Co. v.</b> ...	397
<b>Dennis Bros. Lumber Co. (Inc.) v. N. Y., P. &amp; N. R. R. Co.</b> ....	249
<b>Denver &amp; Rio Grande R. R. Co., Du Pont de Nemours Powder Co. v.</b> .....	427
<b>Detroit &amp; Mackinac Ry. Co., Huron Portland Cement Co. v.</b> ...	225
<b>Director General of Railroads:</b>	
<b>Aetna Explosives Co. v.</b> .....	505
<b>Betts v.</b> .....	519
<b>Dixie Portland Cement Co. v. N., C. &amp; St. L. Ry.</b> .....	517
<b>Doyle v. L. &amp; N. W. R. R. Co.</b> .....	327
<b>Doyle Kidd Dry Goods Co. v. C., R. I. &amp; P. Ry. Co.</b> .....	18
<b>Du Pont de Nemours &amp; Co. v.:</b>	
<b>N. Y., P. &amp; N. R. R. Co.</b> .....	384
<b>P., C., C. &amp; St. L. R. R. Co.</b> .....	533
<b>Du Pont de Nemours Powder Co. v.:</b>	
<b>D. &amp; R. G. R. R. Co.</b> .....	427
<b>H. &amp; B. V. Ry. Co.</b> .....	538
<b>Duckworth Co. v. I. C. R. R. Co.</b> .....	323
<b>Duluth, Missabe &amp; Northern Ry. Co., Newaygo Portland Cement Co. v.</b> .....	225
<b>El Paso &amp; Southwestern Co., Armour &amp; Co. (et al.) v.</b> .....	240
<b>Elsas &amp; Pritz v. S. P. Co. (et al.)</b> .....	356
<b>Erie R. R. Co.:</b>	
<b>Farmers Feed Co. v.</b> .....	317
<b>Larkin Co. v.</b> .....	413
<b>Steinhardt &amp; Kelly v.</b> .....	304
<b>Falk, Wormser &amp; Co. v. S. P. Co.</b> .....	356
<b>Farmers Feed Co. v. E. R. R. Co.</b> .....	317
<b>Feeders' Supply Co. v. C., B. &amp; Q. R. R. Co.</b> .....	353
<b>Ferguson Lumber Co. v. L. &amp; A. Ry. Co.</b> .....	486
<b>Fifteenth Section Applications:</b>	
<b>No. 870</b> .....	84
<b>Nos. 4775 and 4776</b> .....	366
<b>Fingarr v. W. P. R. R. Co.</b> .....	356
<b>Fitchard v. C., M. &amp; St. P. Ry. Co.</b> .....	356
<b>Fourth Section Applications:</b>	
<b>Nos. 54, 98, 226, 553, 839, 2380, 2672, 3054, 3065, 3110, 3114, 3529, 3540, 3758, 3839, 3893, 4218, 4219, 4220, 4779, 4787, and 4823</b> .....	225
<b>Nos. 345 and 349</b> .....	356
<b>52 I. C. C.</b>	



## Fourth Section Applications—Continued.

	Page.
Nos. 378, 461, 488, 601, 602, 620, 625, 628, 631, 636, 677, 678, 689, 693, 700, 701, 792, 793, 794, 795, 796, 797, 798, 1552, 1555, 1950, 1951, 2043, 4218, 4219, 4220, 4944, 4963, and 4964.....	558
Nos. 458, 488, 542, and 601.....	517
Nos. 488 and 1952.....	538
Nos. 488, 601, 792, 799, 1048, 1613, 1951, 1952, 2043, 2045, 2138, 2174, 2193, 4218, 4219, 4220, 4297, 4944, and 4964.....	105
Nos. 631, 697, and 701.....	198
Nos. 703, 1561, and 2060.....	331
Nos. 1548 and 1782.....	583
Freight Bureau of—	
Memphis v. St. L., I. M. & S. Ry. Co.....	105
San Antonio v. I. & G. N. Ry. Co.....	521
Freight Rates Between Points in Minnesota via Interstate Routes and Between Points in Minnesota and Other States.....	225
Galveston, Harrisburg & San Antonio Ry. Co., Schwarz (et al.) v.....	356
Gamble-Robinson Co. v. C., St. P., M. & O. Ry. Co.....	523
George & Co. v. S. P. Co.....	356
Goepper Co. v. S. P. Co.....	356
Graustein v. B. & M. R. R.....	269
Great Northern Ry. Co., Royal Milling Co. v.....	151
Hampton & Branchville R. R. & Lumber Co., Bright-Brooks Lumber Co. v.....	545
Harrisonburg Milling Co. v. A. A. R. R. Co.....	63
Haas & Co. v. T. & P. Ry. Co.....	527
Hite & Rafetto v. C. R. R. Co. of N. J.....	344
Holt & Odell, as Receivers of Aetna Explosives Co. v.:	
A. G. S. R. R. Co.....	235
C. & E. I. R. R. Co.....	393
L. & N. R. R. Co.....	391
Horst Co. v. S. P. Co. (et al.).....	356
Houston & Brazos Valley Ry. Co.:	
Crown Willamette Paper Co. v.....	176
Du Pont de Nemours Powder Co. v.....	538
Humphreys-Godwin Co. v. V., S. & P. Ry. Co.....	148
Huron Portland Cement Co. v. D. & M. Ry. Co.....	225
Illinois Central R. R. Co.:	
Chicago Portland Cement Co. v.....	225
Duckworth Co. v.....	323
New Orleans, Natalbany & Natchez Ry. Co. v.....	429

<b>In re:</b>	<b>Page.</b>
Big Sandy & Cumberland R. R. Co.....	347
Bills of Lading.....	671
Building and Roofing Paper and Paper Board Rates.....	84
Cement Between Points in Western Trunk Line Territory and Between Points in Western Trunk Line Territory and Adjacent Territories.....	225
Louisiana Case.....	105
Louisville Passenger Rates.....	366
Rates on and Classification of Lumber and Lumber Pro- ducts.....	598
Western Cement Rates.....	225
<b>In re Advances:</b>	
Cement from Ada, Okla.....	225
Cement from Duluth, Minn., Mason City and Des Moines, Iowa, to Stations on the Midland Continental Railroad.....	225
Cement Between Points in Illinois and Points in Minnesota and Other States.....	225
Cement to International Falls, Minn., No. 2.....	225
Cement to Iowa Points.....	225
Cement from Mason City, Iowa.....	225
Cement from Mason City, Iowa, and Other Points.....	225
Cement from Mason City, Iowa to Beach, N. Dak.....	225
Cement to Nebraska Stations.....	225
Cement to Sallisaw.....	225
Freight Rates Between Points in Minnesota via Inter- state Routes and Between Points in Minnesota and Other States.....	225
Iowa-Minnesota Cement Rates.....	225
Joint Rates with the Washington Western Ry.....	42
Live Stock Loading and Unloading Charges.....	209
Lumber Transit Privileges at Buffalo, N. Y.....	31
International & Great Northern Ry. Co., San Antonio Freight Bureau v.....	521
International Paper Co. v. L. E. & W. R. R. Co.....	514
Iola Cement Mills Traffic Asso. v A., T. & S. F. Ry. Co.....	225
Iowa-Minnesota Cement Rates.....	225
Jacks v. C. R. R. Co. of N. J.....	356
Joint Traffic Bureau of New Orleans v.:	
A. & S. Ry. Co.....	23
K. C. S. Ry. Co.....	488
Joseph Iron Co. v. A. G. S. R. R. Co.....	22
Kansas City Hay Dealers' Asso. v. C., B. & Q. R. R. Co.....	408

	Page.
Kansas City, Mexico & Orient R. R. Co., Texas Cement Plaster Co. <i>v.</i> .....	293
Kansas City Southern Ry. Co.:	
Bayless Co. <i>v.</i> .....	10
New Orleans Joint Traffic Bureau <i>v.</i> .....	488
Kansas Public Utilities Commission <i>v.</i> A. & S. Ry. Co. ....	198
Kerr & Co. <i>v.</i> S. S. Ry. Co. ....	287
Kerr Paper Mill Co. <i>v.</i> P. R. R. Co. ....	84
Kettle River Co. <i>v.</i> M. P. Ry. Co. ....	73
King & Co. <i>v.</i> N., C. & St. L. Ry. ....	481
Klaber, Wolf & Netter <i>v.</i> S. P. Co. ....	356
Lake Erie & Western R. R. Co., International Paper Co. <i>v.</i> ...	514
Lanier Bros. <i>v.</i> L. & N. R. R. Co. (Director General) .....	580
Laona & Northern R. R. Co. <i>v.</i> M., St. P. & S. Ste. M. Ry. Co. ..	7
Larkin & Co. <i>v.</i> E. R. R. Co. ....	413
Larrowe Milling Co. <i>v.</i> C., W. & L. E. R. R. ....	145
Lehigh Valley Coal Sales Co. <i>v.</i> Lehigh Valley R. R. Co. ....	62
Lehigh Valley R. R. Co., Lehigh Valley Coal Sales Co. <i>v.</i> ....	62
Lillienthal Bros. <i>v.</i> A. C. R. R. Co. ....	356
Live Stock Loading and Unloading Charges .....	209
Livesley & Co. <i>v.</i> S. P. Co. (et al.) .....	356
Loewi <i>v.</i> N. W. P. R. R. Co. ....	356
Long Island R. R. Co., Baker Box Co. <i>v.</i> .....	1
Louisiana & Arkansas Ry. Co.:	
Ferguson Lumber Co. <i>v.</i> .....	486
Natchez Chamber of Commerce <i>v.</i> .....	105
Louisiana & Northwest R. R. Co., Doyle <i>v.</i> .....	327
Louisiana Case .....	105
Louisiana Western R. R. Co., Zelnicker Supply Co. <i>v.</i> .....	543
Louisville & Nashville R. R. Co.:	
Holt & Odell, Receivers of Aetna Explosives Co. <i>v.</i> ....	391
Ohio Valley Coal Operators Asso. <i>v.</i> .....	187
Sloss-Sheffield Steel & Iron Co. <i>v.</i> .....	576
Louisville & Nashville R. R. Co. (Director General), Lanier Bros. <i>v.</i> .....	580
Louisville Passenger Rates .....	366
Lumber and Lumber Products, Rates on and Classification of ..	598
Lumber Transit Privileges at Buffalo, N. Y. ....	31
Lycoming Timber & Lumber Co. (Inc.) <i>v.</i> N. Y., P. & N. R. R. Co. ....	249
Magnus Sons Co. <i>v.</i> N. W. P. R. R. Co. (et al.) .....	356
Mallory Steamship Co., Zelnicker Supply Co. <i>v.</i> .....	363
Marquette Cement Mfg. Co. <i>v.</i> C., R. I. & P. Ry. Co. ....	225
May Co. <i>v.</i> S. P. Co. ....	356

	Page.
Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co. ....	105
Miller v. W. P. R. R. Co. ....	356
Miller Paper Co. v. P. R. R. Co. ....	84
Minneapolis, St. Paul & Sault Ste. Marie Ry. Co. v. Laona & Northern R. R. Co. ....	7
Missouri, Kansas & Texas Ry. Co., Oklahoma Portland Cement Co. v. ....	225
Missouri Pacific Ry. Co., Kettle River Co. v. ....	73
Mobridge Grocery Co. v. C., M. & St. P. Ry. Co. ....	307
Mohr & Bros. v. S. P. Co. ....	356
Morris & Co. v. E. P. & S. W. Co. ....	240
Nashville, Chattanooga & St. Louis Ry.:	
Dixie Portland Cement Co. v. ....	517
King & Co. v. ....	481
Nashville Roller Mills v. C., R. I. & P. Ry. Co. ....	491
Natchez Chamber of Commerce v.:	
A. H. T. Ry. Co. (et al.) ....	558
L. & A. Ry. Co. (et al.) ....	105
National Poultry, Butter & Egg Asso. v. N. Y. C. R. R. Co. .	47
National Steel Rail Co. v. St. L.-S. F. Ry. Co. ....	325
National Supply Co. v. U. P. R. R. Co. ....	379
Naylor & Co. v. D., L. & W. R. R. Co. ....	397
Nephi Plaster & Mfg. Co. v. A., T. & S. F. Ry. Co. ....	433
New Orleans Joint Traffic Bureau v.:	
A. & S. Ry. Co. ....	23
K. C. S. Ry. Co. ....	488
New Orleans, Natalbany & Natchez Ry. Co. v. I. C. R. R. Co. .	429
New York Central R. R. Co., National Poultry, Butter & Egg Asso. v. ....	47
New York, Philadelphia & Norfolk R. R. Co.:	
Du Pont de Nemours & Co. v. ....	384
Virginia Pine Timber Co. (et al.) v. ....	249
Newaygo Portland Cement Co. v. C., M. & St. P. Ry. Co. (et al.)	225
Newman Bros. v. S. P. Co. ....	356
Northampton & Bath R. R. Co., Atlas Portland Cement Co. v. .	387
Northern Pacific Ry. Co., Crowe & Co. v. ....	351
Northwestern Pacific R. R. Co., Magnus Sons Co. (et al) v. ....	356
Northwestern Trading Co. (Inc.) v. Adams Express Co. ....	552
Ohio Valley Coal Operators Asso. v. L. & N. R. R. Co. ....	187
Oklahoma Portland Cement Co. v. M., K. & T. Ry. Co. ....	225
Omaha Commercial Club v. B. & O. R. R. Co. ....	255
Oregon Short Line R. R. Co.:	
Boise Commercial Club v. ....	375
Perrine v. ....	400

	Page.
Page & Hill Co. v. C., St. P., M. & O. Ry. Co. ....	495
Penn Grains & Feed Co. v. P. R. R. Co. ....	317
Pennsylvania R. R. Co.:	
Aetna Explosives Co. v. ....	173
Certain-Teed Products Corp. (et al.) v. ....	84
Penn Grains & Feed Co. v. ....	317
Procter & Gamble Mfg. Co. v. ....	406
Shane Bros. & Wilson Co. v. ....	403
Tuckerton R. R. Co. v. ....	319
Pere Marquette R. R. Co., Newaygo Portland Cement Co. v. .	225
Perrine v. O. S. L. R. R. Co. ....	400
Pine Plume Lumber Co. v. A. R. R. Co. ....	541
Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co., Du Pont de Nemours & Co. v. ....	533
Portland Traffic & Transportation Asso. v.:	
C. P. Ry. Co. ....	167
C., M. & St. P. Ry. Co. ....	169
Preston R. R. Co., Tioga Tanning Co. v. ....	252
Procter & Gamble Mfg. Co. v. P. R. R. Co. ....	406
Public Utilities Commission of—	
Colorado v. A., T. & S. F. Ry. Co. ....	439
Kansas v. A. & S. Ry. Co. ....	198
Public Service Commission of Washington v. American Ry. Express Co. ....	266
Rapson Coal Mining Co. v. C. & S. Ry. Co. ....	164
Rates on Cement Between Points in Western Trunk Line Ter- ritory and Between Points in Western Trunk Line Territory and Adjacent Territories. ....	225
Rates on and Classification of Lumber and Lumber Products. .	598
Refinite Co. v. C. & N. W. Ry. Co. ....	548
Rock Hill Buggy Co. (Inc.) v. S. Ry. Co. ....	583
Rosenwald v. C., M. & St. P. Ry. Co. ....	356
Royal Milling Co. v. G. N. Ry. Co. ....	151
St. Louis, Iron Mountain & Southern Ry. Co., Memphis Freight Bureau v. ....	105
St. Louis-San Francisco Ry. Co., National Steel Rail Co. v. .	325
San Antonio Freight Bureau v. I. & G. N. Ry. Co. ....	521
Sand Springs Ry. Co., Kerr & Co. v. ....	287
Savage Tire Co. v. A., T. & S. F. Ry. Co. ....	499
Schwarz v. G., H. & S. A. Ry. Co. ....	356
Shane Bros. & Wilson Co. v. P. R. R. Co. ....	403
Sherer-Gillett Co. v. B. & O. R. R. Co. ....	3
Shreveport Chamber of Commerce v. A. & V. Ry. Co. ....	105

	Page.
Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co. ....	576
Smith-Connor Hay & Grain Co. v. A. C. L. R. R. Co. ....	331
Southern Pacific Co., Horst Co. (et al.) v. ....	356
Southern Ry. Co.:	
Curry Grocery Co. (Inc.) v. ....	373
Rock Hill Buggy Co. (Inc.) v. ....	583
Tweed Lumber Co. v. ....	493
West Virginia Rail Co. v. ....	419
Western Carolina Lumber & Timber Asso. v. ....	28
Southwestern Paper Co. v. C., R. I. & P. Ry. Co. ....	39
Standard Oil Co. (California) v. A., T. & S. F. Ry. Co. ....	525
Steiner v. S. P. Co. ....	356
Steinhardt & Kelly v. E. R. R. Co. ....	304
Stielow Bros. Co. v. C. & N. W. Ry. Co. ....	339
Sun Co. v. T. & O. C. Ry. Co. ....	12
Susquehanna & New York R. R. Co., Central Pennsylvania Lumber Co. v. ....	21
Sweeney & Co. v. S. P. Co. ....	356
Swift & Co. v. E. P. & S. W. Co. ....	240
Texas & Pacific Ry. Co., Haas & Co. v. ....	527
Texas Cement Plaster Co. v. A., T. & S. F. Ry. Co. (et al.) ...	293
Three Lakes Lumber Co. v. W. W. Ry. Co. ....	42
Tioga Tanning Co. v. Preston R. R. Co. ....	252
Toledo & Ohio Central Ry. Co., Sun Co. v. ....	12
Traffic & Transportation Asso. of Portland v.:	
C. P. Ry. Co. ....	167
C., M. & St. P. Ry. Co. ....	169
Traffic Bureau of New Orleans v.:	
A. & S. Ry. Co. ....	23
K. C. S. Ry. Co. ....	488
Tuckerton R. R. Co. v. P. R. R. Co. ....	319
Tweed Lumber Co. v. S. Ry. Co. ....	493
Uhlman & Co. v. A., T. & S. F. Ry. Co. ....	356
Ullman & Co. v. A., T. & S. F. Ry. Co. (et al.) ....	356
Union Pacific R. R. Co., National Supply Co. v. ....	379
Union Traction Co. v. A., T. & S. F. Ry. Co. ....	281
Vicksburg, Shreveport & Pacific Ry. Co., Humphreys-Godwin Co. v. ....	148
Virginia Pine Timber Co. v. N. Y., P. & N. R. R. Co. ....	249
Washington Western Ry. Co., Three Lakes Lumber Co. v. ....	42
Wattenberg Co. v. G., H. & S. A. Ry. Co. ....	356
Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co. ....	503
West Virginia Rail Co. v. S. Ry. Co. ....	419

	<b>Page.</b>
Western Carolina Lumber & Timber Asso. v. S. Ry. Co. ....	28
Western Cement Rates .....	225
Western Pacific R. R. Co., Livesley & Co. (et al.) v. ....	356
Wheeler Lumber Bridge & Supply Co. v. C., R. I. & P. Ry. Co. ...	370
Wilson & Co. v. E. P. & S. W. Co. ....	240
Wisconsin Granite Co. v. C. & N. W. Ry. Co. ....	330
Wolf, Netter & Co. v. S. P. Co. ....	356
Worcester Brewing Corp. v. C. C. T. Co. ....	356
Zelnicker Supply Co. v.:	
L. W. R. R. Co. ....	543
M. S. S. Co. ....	363
	52 I. C. C.

## TABLE OF CASES CITED.

	Page.
Adams Express Co. v. Croninger (226 U. S., 491) .....	677, 696
Albin v. C., M. & St. P. Ry. Co. (42 I. C. C., 477) .....	351
Albree v. B. & M. R. R. (22 I. C. C., 303) .....	270
Aldrich v. A. C. L. R. R. Co. (104 S. C., 364) .....	729
American Beet Sugar Co. v. S. P. Co. (41 I. C. C., 631) .....	24
American Cement Plaster Co. v. A., T. & S. F. Ry. Co. (38 I. C. C., 639) .....	299
American Merchants' Union Exp. Co. v. Wolf (79 Ill., 430) .....	720
Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co. (20 I. C. C., 43) .....	497
Anson, Gilkey & Hurd Co. v. S. P. Co.:	
(33 I. C. C., 332) .....	601, 612, 639
(38 I. C. C., 105) .....	601, 612
Atchison, T. & S. F. Ry. Co. v. U. S. (232 U. S., 199) .....	245
Atlantic C. L. R. R. Co. v. Riverside Mills (219 U. S., 186) .....	682
Baltimore Chamber of Commerce v. B. & O. R. R. Co. (22 I. C. C., 596) .....	158
Birdsboro Stone Co. v. P. R. R. Co. (49 I. C. C., 681) .....	407
Blackman & Griffin Co. v. A., C. & Y. Ry. Co. (49 I. C. C., 649) .....	508
Blankenship v. B. S. & C. R. R. Co. (17 I. C. C., 569) .....	347
Board of Trade of Kansas City v. St. L. & S. F. R. R. Co. (32 I. C. C., 297) .....	158
Boardman & Co. v. S. P. Co. (37 I. C. C., 81) .....	222
Boston & M. R. R. v. Hooker (233 U. S., 97) .....	677
Bowie Lumber Co. v. M. L. & T. R. R. & S. S. Co. (39 I. C. C., 609) .....	639
Brooks Coal Co. v. Wabash R. R. Co. (39 I. C. C., 426) .....	290
Brunswick-Balke-Collender Co. v. T., S. & M. Ry. Co. (44 I. C. C., 598) .....	728
Bulte Milling Co. v. C. & A. R. R. Co. (15 I. C. C., 351) .....	651
Business Men's League of St. Louis v. A., T. & S. F. Ry. Co. (44 I. C. C., 308) .....	82
California Pole & Piling Co. v. S. P. Co. (22 I. C. C., 507) .....	639
Carey Mfg. Co. v. G. T. W. Ry. Co. (36 I. C. C., 203) .....	258
Casket Mfrs. Asso. of America v. B. & O. R. R. Co. (49 I. C. C., 327) .....	17
Castner, Curran & Bullitt v. P. Co. (42 I. C. C., 3) .....	186, 344
52 I. C. C.	



**Cattle Raisers Asso. of Texas v.:**

<b>C., B. &amp; Q. R. R. Co.</b>	<b>Page.</b>
(11 I. C. C., 277).....	212
(12 I. C. C., 507).....	212
<b>Ft. W. &amp; D. C. Ry. Co. (7 I. C. C., 513).....</b>	<b>212</b>
<b>C. F. A. Class Scale Case (45 I. C. C., 254).....</b>	<b>27, 90</b>
<b>Chamber of Commerce of—</b>	
<b>Freeport, Ill. v. C., M. &amp; St. P. Ry. Co. (33 I. C. C., 673) ..</b>	<b>444</b>
<b>Houston, Tex. v. I. &amp; G. N. Ry. Co. (32 I. C. C., 247).....</b>	<b>565</b>
<b>Chapman v. Great Western Ry. Co. (5 Q. B. D., 278).....</b>	<b>697</b>
<b>Chicago, M. &amp; St. P. Ry. Co. v. Iowa (233 U. S., 334).....</b>	<b>320</b>
<b>Chicago, St. L. &amp; N. O. R. R. Co. v. Moss (60 Miss., 1003).....</b>	<b>707</b>
<b>Cities of Marshall &amp; Jefferson, Tex., v. T. &amp; P. Ry. Co. (39 I. C. C., 249).....</b>	<b>458, 562</b>
<b>City of—</b>	
<b>Memphis v. C., R. I. &amp; P. Ry. Co. (43 I. C. C., 121).....</b>	<b>114, 130</b>
<b>Spokane v. N. P. Ry. Co. (19 I. C. C., 162).....</b>	<b>475</b>
<b>Cleveland, C. C. &amp; St. L. Ry. Co. v. Dettlebach (239 U. S., 588)</b>	<b>699</b>
<b>Cleveland Salt Co. v. P. Co. (34 I. C. C., 638).....</b>	<b>402</b>
<b>Coffeyville Mercantile Co. v. M., K. &amp; T. Ry. Co.:</b>	
<b>(33 I. C. C., 122).....</b>	<b>497</b>
<b>(34 I. C. C., 231).....</b>	<b>497</b>
<b>Coggs v. Bernard:</b>	
<b>(1 Smith's Leading Cases, 369).....</b>	<b>679</b>
<b>(2 Lord Raymond, 909).....</b>	<b>679</b>
<b>Coke Producers' Asso. of Connellsville v. B. &amp; O. R. R. Co. (27 I. C. C., 125).....</b>	<b>100</b>
<b>Colorado Mfrs. Asso. v. A., T. &amp; S. F. Ry. Co. (28 I. C. C., 82) ..</b>	<b>444</b>
<b>Columbia Chamber of Commerce v. S. Ry. Co. (28 I. C. C., 339) ..</b>	<b>646</b>
<b>Commercial Club of—</b>	
<b>Mitchell, S. Dak. v. A. &amp; W. Ry. Co. (46 I. C. C., 1).....</b>	<b>311</b>
<b>Salt Lake City v. A., T. &amp; S. F. Ry. Co.</b>	
<b>(19 I. C. C., 218).....</b>	<b>446, 508</b>
<b>(21 I. C. C., 400).....</b>	<b>508</b>
<b>Corporation Commission of—</b>	
<b>New Mexico v. A., T. &amp; S. F. Ry. Co. (34 I. C. C., 292) ..</b>	<b>447, 464</b>
<b>Oklahoma v. A. &amp; S. Ry. Co.</b>	
<b>(23 I. C. C., 688).....</b>	<b>562</b>
<b>(26 I. C. C., 520).....</b>	<b>206, 455, 470, 562</b>
<b>Cosmopolitan Shipping Co. v. Hamburg-Amer. Packet Co. (13 I. C. C., 266).....</b>	<b>730</b>
<b>Covington Stock Yards Co. v. Keith (139 U. S., 128).....</b>	<b>217</b>
<b>Dallas Chamber of Commerce v. A., T. &amp; S. F. Ry. Co. (40 I. C. C., 619).....</b>	<b>124, 565</b>
	<b>52 I. C. C.</b>

	Page.
Daugherty, McKey & Co. v. A. C. L. R. R. Co. (45 I. C. C., 535)	639
Davies v. L. & N. R. R. Co. (18 I. C. C., 540)	216
Decker & Sons v. C., M. & St. P. Ry. Co. (30 I. C. C., 547)	311, 448, 646
Deleware, The (14 Wall., 579)	681
Deleware, Lackawana & Western Coal Co. v. D., L. & W. R. R. Co.:	
(46 I. C. C., 506)	62
(49 I. C. C., 203)	62
Denver & R. G. R. R. Co. v. Peterson Grocery Co. (59 Colo., 125)	711
Denver Consumers & Shippers Asso. v. C. & S. Ry. Co. (24 I. C. C., 570)	454
Douglas & Co. v. I. C. R. R. Co. (31 I. C. C., 587)	158
Doyle v. Continental (94 U. S., 535)	217
Du Pont de Nemours Powder Co. v.:	
C. R. R. Co. of N. J. (25 I. C. C., 19)	27
H. & B. V. Ry. Co. (47 I. C. C., 221)	538
L. & N. R. R. Co. (33 I. C. C., 288)	27
P. & R. Ry. Co. (44 I. C. C., 531)	27
Dumee, Son & Co. v. P. R. R. Co. (26 I. C. C., 33)	405
Eastern Wheel Mfrs. Asso. v. A. & V. Ry. Co. (27 I. C. C., 370)	601, 638
Emery & Co. v. B. & M. R. R. (38 I. C. C., 636)	147
Empson Packing Co. v. C. M. Ry. Co. (22 I. C. C., 268)	158
Export Freight Free Time (47 I. C. C., 162)	734
Fenner v. Railroad (44 N. Y., 505)	697
Fetterman Bowl & Column Mfg. Co. v. S. Ry. Co. (33 I. C. C., 514)	639
Fifteen Per Cent Case (45 I. C. C., 303)	13, 82, 86, 191, 227, 250, 288, 340, 384, 445, 462, 535, 542, 577, 618
Five Per Cent Case (31 I. C. C., 351)	340
Five Per Cent Case (32 I. C. C., 325)	250, 340, 516, 594
Ford Co. v. M. C. R. R. Co. (19 I. C. C., 507)	581
Fourth Section Violations in the Southeast:	
(30 I. C. C., 153)	482
(32 I. C. C., 61)	482
Fullerton Powell Hardwood Lumber Co. v. V. & S. W. Ry. Co. (20 I. C. C., 86)	639
Galveston Commercial Asso. v. A., T. & S. F. Ry. Co. (25 I. C. C., 216)	726
Georgia, F. & A. Ry. Co. v. Blish (241 U. S., 190)	719
Gilmore & Co. v. C. & N. W. Ry. Co. (25 I. C. C., 403)	342
Globe Soap Co. v. A. & S. Ry. Co.:	
(40 I. C. C., 121)	516
(45 I. C. C., 25)	516

	Page.
Globe-Wernicke Co. v. B. & O. R. R. Co. (31 I. C. C., 274) . . .	4
Goldfield Cases (34 I. C. C., 360) . . . . .	477
Graustein v. B. & M. R. R. (45 I. C. C., 393) . . . . .	269
Great Western Sugar Co. v. Y. & M. V. R. R. Co. (34 I. C. C., 45)	332
Green & Son v. S. Ry. Co. (40 I. C. C., 157) . . . . .	639
Grubb v. A. C. L. R. R. Co. (101 S. C., 210) . . . . .	711
Gulf, C. & S. F. Ry. Co. v. Texas (204 U. S., 403) . . . . .	320
Hamlen & Sons Co. v. I. C. R. R. Co. (212 Fed., 324) . . . . .	728
Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co. (30 I. C. C., 71) . . . . .	342
Harmount v. L. & N. R. R. Co. (45 I. C. C., 162) . . . . .	639
Heater Car Service Regulations (50 I. C. C., 620) . . . . .	258
Higgins v. U. S. M. S. S. Co. [3 Blatchford (U. S. C. C.), 282] .	681
Houston E. & W. T. Ry. Co. v. Inman, Akers & Inman (63 Tex. Civ. App., 556) . . . . .	727
Houston Tie & Lumber Co. v. M. L. & T. R. R. & S. S. Co. (46 I. C. C., 469) . . . . .	639
Hutchinson Traffic Bureau v. A., T. & S. F. Ry. Co. (40 I. C. C., 160) . . . . .	124
Increase in Express Rates (51 I. C. C., 263) . . . . .	268
Indianapolis Chamber of Commerce v. St. L. & S. F. R. R. Co. (42 I. C. C., 6) . . . . .	639
Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co.: (15 I. C. C., 367) . . . . .	646
(16 I. C. C., 56) . . . . .	646
In re:	
Alleged Unreasonable Rates on Meats (22 I. C. C., 160) . . .	158
Bills of Lading (14 I. C. C., 346) . . . . .	677
Coal Switching Reparation Cases at Chicago (36 I. C. C., 226) . . . . .	290
Cummins Amendment (33 I. C. C., 682) . . . . .	684
Des Moines Commodity Rates (34 I. C. C., 281) . . . . .	646
Express Rates, Practices, Accounts, and Revenues (24 I. C. C., 380) . . . . .	268, 446
Fourth Section Application of Southern Pacific Co. (22 I. C. C., 366) . . . . .	178
Import and Domestic Rates—Clay (39 I. C. C., 132) . . . .	158
Joint Rates with the Washington Western Ry.: (27 I. C. C., 630) . . . . .	42
(41 I. C. C., 649) . . . . .	42
Lake-and-Rail Butter and Egg Rates (29 I. C. C., 45) . . . .	602
Lost or Damaged Freight Replacement (43 I. C. C., 257) . .	684
Louisiana Cotton (46 I. C. C., 451) . . . . .	527

## In re—Continued.

## Page.

Louisville & Nashville R. R. Coal and Coke Rates (50 I. C. C., 54).....	195
New England Investigation (27 I. C. C., 561).....	100
Private Car Case (50 I. C. C., 652).....	242
Rates to North Carolina Points (29 I. C. C., 550).....	587
Rates on Railroad Fuel and Other Coal (36 I. C. C., 1)...	321
Rates on Sugar (31 I. C. C., 495).....	374
Rates for Transportation of Anthracite Coal (35 I. C. C., 220).....	62
Restricted Rates (20 I. C. C., 426).....	322
Sugar Rates from New Orleans (32 I. C. C., 606).....	374
Through Rates to Points in Louisiana and Texas (38 I. C. C., 153).....	489, 559
Weighing of Freight by Carriers (28 I. C. C., 7).....	318
Western Cement Rates (48 I. C. C., 201).....	226
Western Classification Case (25 I. C. C., 442).....	630

## In re Advances:

Acid between Illinois Points (49 I. C. C., 498).....	426
Apples in Carloads (24 I. C. C., 38).....	201
Bituminous Coal to C. F. A. Territory (46 I. C. C., 66)...	340
Cement-Plaster from Plasterco, Tex. (43 I. C. C., 615)....	296
Chicago Switching Charges (28 I. C. C., 677).....	342
Class and Commodity Rates to Salt Lake City, Utah (32 I. C. C., 551).....	446, 474, 508
Coal by the C. & O. Ry. Co. (22 I. C. C., 604).....	647
Coal within Chicago Switching District (27 I. C. C., 71)...	342
Dunnage Allowances (30 I. C. C., 538).....	174, 223, 334
Fruits from Florida (43 I. C. C., 595).....	482
Gasoline from Coffeyville, Kans. (43 I. C. C., 98).....	283
Glucose from Chicago (36 I. C. C., 379).....	651
Hop Rates (25 I. C. C., 16).....	359
Indiana and Illinois Coal (40 I. C. C., 603).....	340
Johnstown, Pa., Switching (43 I. C. C., 654).....	292
Lumber to Iowa Points (44 I. C. C., 401).....	371
Lumber Transit Privileges at Buffalo, N. Y. (33 I. C. C., 601).....	32
New Orleans-Texas Rates (38 I. C. C., 1).....	112, 570
Official Classification Rates on Paper (38 I. C. C., 120)...	85
Rates on High Explosives to G. T. Ry. System Stations (33 I. C. C., 567).....	395
Rates on Scrap Iron from Gulf Ports (33 I. C. C., 668)....	421
Sash, Doors, and Blinds into Texas (26 I. C. C., 116)....	650
Sulphuric Acid from New Orleans, La. (42 I. C. C., 200)...	424, 505
Switching Charges at Milwaukee, Wis. (32 I. C. C., 509)...	504

	Page.
In re Advances—Continued.	
Swithing Charges on Coal and Coke (32 I. C. C., 444).....	342
Transcontinental Commodity Rates (48 I. C. C., 79).....	17
Wall Board Rating (43 I. C. C., 189).....	947
International Agricultural Corporation v. L. & N. R. R. Co. (22 I. C. C., 488).....	424
International Paper Co. v. D. & H. Co. (33 I. C. C., 270).....	258
Interstate Commerce Commission v.:	
C., B. & Q. R. R. Co. (186 U. S., 320).....	219
Difffenbaugh (222 U. S., 42).....	158
Iowa State Board of R. R. Commissioners v. A. E. R. R. Co. (28 I. C. C., 193).....	206
Jefferson Milling Co. v. B. & O. R. R. Co. (31 I. C. C., 547).....	504
Jewett, Bigelow & Brooks v. C., H. & D. Ry. Co. (36 I. C. C., 655).....	186
Kanotex Refining Co. v. A., T. & S. F. Ry. Co. (34 I. C. C., 271)	77
Kansas City Hay Dealers' Asso. v. C. G. W. R. R. Co. (49 I. C. C., 372).....	412
Kansas C. S. Ry. Co. v. Carl (227 U. S., 639).....	677
Kehoe & Co. v. N., C. & St. L. Ry. (14 I. C. C., 555).....	717
Kelley Plow Co. v. T. & P. Ry. Co. (26 I. C. C., 581).....	639
Kerr & Co. v. S. S. Ry. Co. (40 I. C. C., 291).....	287
Kindel v. N. Y., N. H. & H. R. R. Co. (15 I. C. C., 555).....	444, 454, 473
Kornfalfa Feed Milling Co. v. A., T. & S. F. Ry. Co. (38 I. C. C., 307).....	412
Kosse, Shoe & Schleyer Co. v. C., C., C. & St. L. Ry. Co. (41 I. C. C., 602).....	548
Laona & N. R. R. Co. v.:	
C. & N. W. Ry. Co. (49 I. C. C., 75).....	9
M., St. P. & S. S. M. Ry. Co. (24 I. C. C., 639).....	7
Larkin Co. v. E. & W. Transp. Co. (24 I. C. C., 645).....	685
Lehigh Valley R. R. Co. v. Barlow (244 U. S., 183).....	320
Levering Bros v. P., B. & W. R. R. Co. (38 I. C. C., 349).....	399, 402
Lewis v. C. & O. Ry. Co. (47 W. Va., 656).....	704
Lindsay Bros. v. G. R. & I. Ry. Co. (15 I. C. C., 182).....	150
Liverpool & L. & G. Ins. Co. v. McNeill (89 Fed., 131).....	717
Lombard Brick & Tile Co. v. C. & N. W. Ry. Co. (30 I. C. C., 84).....	343
Los Angeles Switching Case (234 U. S., 294).....	715
Louisville & N. R. R. Co. v.:	
Maxwell (237 U. S., 94).....	331
U. S. (39 Ct. Cl., 405).....	704
Lynah & Read v. B. & O. R. R. Co. (18 I. C. C., 38).....	182
McCaull-Dinsmore Co. v. C., M. & St. P. Ry. Co. (252 Fed., 664)	711
McDonald v. The Railroad (34 N. Y., 497).....	704

	Page.
McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co. (43 I. C. C., 581).....	161
McVeagh v. A., T. & S. F. Ry. Co. (3 N. Mex., 205).....	703
Maricopa County Commercial Club v. S. F., P. & P. Ry. Co. (19 I. C. C., 257).....	466
Matheson v. S. Ry. Co. (79 S. C., 155).....	711
Mebius & Drescher Co. v. C. C. T. Co. (42 I. C. C., 599) ..	272, 292, 359
Memphis Freight Bureau v.:	
A. & V. Ry. Co. (45 I. C. C., 121).....	639
K. C. S. Ry. Co. (17 I. C. C., 90).....	543
St. L., I. M. & S. Ry. Co. (39 I. C. C., 224) 107, 382, 447, 458, 561	
Merchants' etc. Co. v. Hallock (64 Ill., 284).....	720
Michigan Percentage Cases (47 I. C. C., 409).....	444
Midcontinent Oil Rates (36 I. C. C., 109).....	282
Minneapolis Civic & Commerce Asso. v. C., M. & St. P. Ry. Co. (30 I. C. C., 663).....	313
Mississippi River Case:	
(28 I. C. C., 47).....	646
(29 I. C. C., 530).....	646
Missouri, K. & T. Ry. Co. v. Harriman (227 U. S., 657).....	677
Missouri Rate Cases (230 U. S., 474).....	75
Missouri River-Nebraska Cases (40 I. C. C., 201) .....	111, 206 313, 382, 447, 470
Mitchell v. The Railway Co. (10 L. R. Q. B., 256).....	697
Mobile & Montgomery R. Co. v. Jurey (111 U. S., 584).....	711
Moses v. The Railroad (32 N. H., 523).....	696
Mutual Rice Trade & Devel. Asso. Houston v. I. & G. N. R. R. Co. (23 I. C. C., 219).....	124
Myer v. Peck [1 Tiffany (28 N. Y.), 590].....	681
Napanee Lumber & Mfg. Co. v. B. & O. S. W. R. R. Co. (43 I. C. C., 236).....	639
Nashville, C. & St. L. Ry. Co. v. Dreyfuss-Weil Co. (150 Ky., 333) .....	720
Nashville Tie Co. v. L. & N. R. R. Co.:	
(38 I. C. C., 689).....	639
(40 I. C. C., 377).....	78
Natchez Chamber of Commerce v. L. & A. Ry. Co. (52 I. C. C., 105).....	489, 559
National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co. (40 I. C. C., 484).....	3
National Lumber Dealers' Asso. v. A. C. L. R. R. Co. (14 I. C. C., 154).....	216
National Pole Co. v. C., St. P., M. & O. Ry. Co. (22 I. C. C., 378) .....	639
52 I. C. C.	

	Page.
New England Milk Case (40 I. C. C., 699) .....	279
New York Mercantile Exchange v. B. & O. R. R. Co. (36 I. C. C., 156) .....	56
New York Produce Exchange v. B. & O. R. R. Co. (46 I. C. C., 666) .....	730
Newman Lumber Co. v. N. O. & N. E. R. R. Co. (47 I. C. C., 33) .....	405
Nitro Powder Co. v. W. S. R. R. Co. (35 I. C. C., 77) .....	27
Northampton & Bath R. R. Co. Case (41 I. C. C., 68) .....	387
Northwestern Salt Cases (45 I. C. C., 12) .....	169
Northwestern Trading Co., Inc., v. Adams Express Co. (51 I. C. C., 211) .....	552
Norway Plains Co. v. R. R. Co. (1 Gray, 263) .....	696
Oden & Elliott v. S. A. L. Ry. (37 I. C. C., 345) .....	150
O'Hanlon v. Ry. Co. (6 Best & S., 484) .....	711
Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co. (39 I. C. C., 497) .....	582
Oklahoma Traffic Asso. v. A. & S. Ry. Co. (36 I. C. C., 329) ..	639
Oliver Chilled Plow Works v. N. Y. C. R. R. Co. (45 I. C. C., 356) .....	389
Oregon & Washington Lumber Mfrs. Asso. v. U. P. R. R. Co. (14 I. C. C., 1) .....	43
Oshkosh Traffic Asso. v. C. & N. W. Ry. Co. (21 I. C. C., 385) ..	639
Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co. (16 I. C. C., 134) .....	202
Pacific Coast Lumber Mfrs. Asso. v. N. P. Ry. Co. (16 I. C. C., 465) .....	627
Parry & Co. v. P. R. R. Co. (29 I. C. C., 559) .....	399, 402
Peale, Peacock & Kerr v. C. R. R. Co. of N. J. (18 I. C. C., 25) ..	182
Peet Bros. Mfg. Co. v. I. C. R. R. Co. (34 I. C. C., 634) .....	311
Pierce Co. v. Wells, Fargo & Co. (236 U. S., 278) .....	677
Pittsburgh Steel Co. v. P. & L. E. R. R. Co. (39 I. C. C., 312) ..	292
Poor Grain Co. v. C., B. & Q. Ry. Co.: (12 I. C. C., 418) .....	331
(12 I. C. C., 469) .....	331
Portland Railway Light & Power Co. v. Railroad Commission of Oregon (229 U. S., 397) .....	94
Powell-Myers Lumber Co. v.: B. & O. S. W. R. R. Co. (41 I. C. C., 425) .....	639
L., H. & St. L. Ry. Co. (42 I. C. C., 245) .....	639
Procter & Gamble Co. v. C., H. & D. Ry. Co. (19 I. C. C., 556) ..	245
Proposed Increase in Express Rates (50 I. C. C., 385) .....	266
Public Service Commission of Missouri v. Wabash R. R. Co. (37 I. C. C., 297) .....	201

## Railroad Commission of—

## Louisiana v.:

## A. H. T. Ry. Co.:

	Page.
(41 I. C. C., 83) .....	109, 179, 354, 447, 457, 522, 559
(48 I. C. C., 312) .....	447, 522, 559

## St. L. S. W. Ry. Co.:

(23 I. C. C., 31) .....	565
(34 I. C. C., 472) .....	565
(234 U. S., 342) .....	565

## Nevada v. S. P. Co.:

(19 I. C. C., 238) .....	466, 476
(21 I. C. C., 329) .....	646

## Texas v. A., T. &amp; S. F. Ry. Co. (20 I. C. C., 463) .....

454

## Reconsignment Case (47 I. C. C., 590) .....

2

## Red Ash Coal Co. v. C. R. R. Co. of N. J. (37 I. C. C., 460) .....

182

## Red River Oil Co. v. T. &amp; P. Ry. Co. (23 I. C. C., 438) .....

727

## Richardson v. Canadian Pacific R. Co. (19 Ont. R., 369) .....

697

## Rodocanachi v. Milburn (18 Q. B. Div., 67) .....

711

## Roy &amp; Roy Mill Co. v. B. &amp; M. R. R. (44 I. C. C., 523) .....

401

## Royal Milling Co. v. G. N. Ry. Co.:

(41 I. C. C., 29) .....	151
(47 I. C. C., 263) .....	151

## Saginaw Board of Trade v. G. T. Ry. Co. (17 I. C. C., 128) .....

444

## St. Louis, A. &amp; T. H. R. Co. v. Montgomery (39 Ill., 335) .....

703

## St. Louis, I. M. &amp; S. Ry. Co. v. Starbird (243 U. S., 592) .....

729

## St. Louis S. W. Ry. Co. v. U. S. (245 U. S., 136) .....

264

## Sawyer &amp; Austin Lumber Co. v. St. L., I. M. &amp; S. Ry. Co. (21 I. C. C., 464) .....

124

## Second Industrial Railways Case (34 I. C. C., 596) .....

389

## Settle v. B. &amp; O. S. W. R. R. Co. (249 Fed., 913) .....

320

## Shellabarger Elevator Co. v. I. C. R. R. Co. (278 Ill., 333) .....

694

## Showers Bros. Co. v. A. A. R. R. Co. (48 I. C. C., 518) .....

4

## Shreveport Case. See Railroad Commission of Louisiana.

## Shreveport Chamber of Commerce v. A. &amp; V. Ry. Co. (39 I. C. C., 224) .....

107

## Signor Tie Co. v. I. &amp; G. N. R. R. Co. (21 I. C. C., 615) .....

639

## Sloss-Sheffield Steel &amp; Iron Co. v. L. &amp; N. R. R. Co.:

(30 I. C. C., 597) .....	576
(35 I. C. C., 460) .....	577
(46 I. C. C., 558) .....	577
(51 I. C. C., 635) .....	576

## Southard v. M., St. P. &amp; S. S. M. Ry. Co. (60 Minn., 382) .....

704

## Southeastern Sugar Cases (48 I. C. C., 739) .....

374

## Southern Lumber &amp; Mfg. Co. v. C., C., C. &amp; St. L. Ry. Co. (43 I. C. C., 13) .....

639

## 52 I. C. C.



	Page.
Southern Pacific Terminal Co. v. I. C. C. (219 U. S., 498).....	727
Southern Ry. Co. v. Prescott (240 U. S., 632).....	696
Southwestern Class Case (48 I. C. C., 379).....	562
Southwestern Shippers Traffic Asso. v. A., T. & S. F. Ry. Co. (24 I. C. C., 570).....	454
Spartanburg Chamber of Commerce v. S. Ry. Co. (34 I. C. C., 484).....	586
Standard Oil Co. (Calif.) v. A., T. & S. F. Ry. Co. (51 I. C. C., 598).....	525
State ex rel. Rhodes v. Public Service Commission (270 Mo., 547).....	75
State of—	
Iowa v. A. C. L. R. R. Co. (24 I. C. C., 134).....	650
Kansas v. A., T. & S. F. Ry. Co. (27 I. C. C., 673).....	449
Stonega Coke & Coal Co. v. L. & N. R. R. Co. (39 I. C. C., 523)	195
Switzer Lumber Co. v. A. & M. R. R. Co. (22 I. C. C., 471).....	639
Tallassee Falls Mfg. Co. v. Western Ry. of Alabama (128 Ala., 167).....	717
Tap Line Case:	
(23 I. C. C., 277).....	431
(23 I. C. C., 549).....	431
(31 I. C. C., 490).....	9, 42, 349, 429
(234 U. S., 1).....	42, 431
Texarkana Freight Bureau v. St. L., I. M. & S. Ry. Co. (28 I. C. C., 569).....	122
Texas & N. O. R. R. Co. v. Sabine Tram Co. (227 U. S., 111).....	404
Texas & P. Ry. Co. v. Railroad Commission of Louisiana (183 Fed., 1005).....	727
Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co. (26 I. C. C., 508).....	296
Thompson, Ritchie & Co. v. V., S. & P. Ry. Co. (39 I. C. C., 287)	561
Tidewater Demurrage (46 I. C. C., 677).....	184
Traffic Bureau of Merchants Exchange v. S. P. Co. (19 I. C. C., 259).....	473
United States v. Union Stockyard & Transit Co.:	
(192 Fed., 330).....	212
(226 U. S., 286).....	212
United States Cast Iron Pipe & Foundry Co. v. S. Ry. Co. (44 I. C. C., 757).....	292
Virginia Pine Timber Co. v. N. Y., P. & N. R. R. Co. (50 I. C. C., 327).....	249
Washburn-Crosby Co. v. B. & A. R. R. Co. (180 Mass., 252) ..	738
Weed v. Barney (45 N. Y., 344).....	720

	Page.
West Virginia Rail Co. v. B. & O. R. R. Co. (50 I. C. C., 318) ..	421
Western & A. R. Co. v. Exposition Cotton Mills (81 Ga., 522) ..	707
Western Carolina Lumber & Timber Asso. v. S. Ry. Co. (41 I. C. C., 753) ..	28
Western Passenger Fares (37 I. C. C., 1) ..	259
Wheeler Lumber, Bridge & Supply Co. v. St. L., I. M. & S. Ry. Co. (23 I. C. C., 514) ..	371
Wichita Wholesale Furniture Co. v. A., T. & S. F. Ry. Co. (44 I. C. C., 339) ..	308
Willamette Valley Lumbermen's Asso. v. S. P. Co. (51 I. C. C., 250) ..	32, 102, 157
Williams Co. v. V., S. & P. Ry. Co. (16 I. C. C., 482) ..	565
Wilson v. International Ry. Co. (160 N. Y. S., 367) ..	704
Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co. (33 I. C. C., 33) ..	653
Wisconsin Rate Cases (44 I. C. C., 602) ..	445
Woolf Milling Co. v. B. & O. R. R. Co. (49 I. C. C., 678) ..	504
Yellow Pine Sash, Door & Blind Mfrs. Asso. v. S. Ry. Co. (35 I. C. C., 150) ..	601, 612, 628, 639
52 I. C. C.	



# INTERSTATE COMMERCE COMMISSION REPORTS.

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No. 10027.

BAKER BOX COMPANY

v.

LONG ISLAND RAILROAD COMPANY.

---

*Submitted April 22, 1918. Decided December 23, 1918.*

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Demurrage and track storage charges for detention at Bushwick station, Brooklyn, N. Y., of a carload of sawdust shipped from East Jaffrey, N. H., found to have been unreasonable in part. Reparation awarded.

*H. L. Pease* for complainant.

No appearance for defendant.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, MEYER, AND HALL.

### By DIVISION 3:

The complainant, a corporation engaged in the manufacture of box shooks at Worcester, Mass., by its complaint filed January 12, 1918, seeks reparation for alleged unreasonable demurrage and track storage charges collected by the defendant at Bushwick station, Brooklyn, N. Y., on a carload of sawdust shipped July 7, 1917, from East Jaffrey, N. H.

The shipment was consigned to the complainant at Bushwick station, New York. On July 9, 1917, the complainant mailed from Worcester to the defendant's agent at Brooklyn a diversion notice ordering the car delivered to the Lignum Chemical Works at Brooklyn. The car arrived at Bushwick station July 23, 1917, at 12 m., 14 days after the order to change the consignee was mailed. Notice of arrival was mailed to the original consignee July 24, 1917, at 5 p. m., and the car was placed at Bushwick station at 9 p. m., the same day. On July 26, 1917, the complainant notified defendant's agent at Bushwick station that the car was for the Lignum Chemical Works. The new consignee received the carrier's notice of arrival dated July 27, 1917, commenced unloading the car July 28, and released it August 1, 1917. Detention charges were collected in accordance with defendant's tariffs in the sum of \$17, composed of \$9 demurrage and \$8 track storage charges.

No evidence was offered for the defendant and there is nothing to rebut the presumption that complainant's order of July 9, 1917, was received by the carrier in due course of mail prior to the arrival of the car at Bushwick. The complainant states that the Lignum Chemical Company properly paid and bore \$4 demurrage and \$2 track storage charges, total \$6, for two days' detention, but contends that detention charges should have been computed from 7 a. m. of July 31, and that the charges assessed were unlawful and unreasonable to the extent that they exceeded \$6.

The defendant's tariffs made no provision for, and should be amended promptly to permit, a single change in the name of the consignee at the first destination without charge if the order is received in time to permit instructions being given to yard employees prior to arrival of car at first destination or at terminal yard serving such destination in conformity with rule 8 (a) which was approved in *The Reconsignment Case*, 47 I. C. C., 590, 641.

We find that the detention charges collected on the shipment were unreasonable to the extent that they exceeded \$6; that the shipment was made as described; that the complainant paid and bore \$5 demurrage and \$6 track storage charges thereon, which is the amount of charges in excess of those herein found reasonable; and that it has been damaged and is entitled to reparation in the sum of \$11, with interest.

An appropriate order will be entered.

52 I. C. C.

No. 9939.

SHERER-GILLETT COMPANY ET AL.

v.

BALTIMORE &amp; OHIO RAILROAD COMPANY ET AL.

---

Submitted April 29, 1918. Decided December 23, 1918.

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Less-than-carload rating of one and one-half times first class applicable under the official classification to counters, wall-case bases, and shelving bases, not found unreasonable. Complaint dismissed.

*Ernest L. Ewing* for complainants.

*Elvert M. Davis* and *D. P. Connell* for official classification lines.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, MEYER, AND HALL.

## BY DIVISION 3:

The complainants herein assail the less-than-carload rating of one and one-half times first class, applicable under official classification to counters, wall-case bases and shelving bases as unreasonable and ask for a rating not in excess of first class.

There are two general types of the counters and bases; some of a so-called shell type, others with bins and drawers. The complaint is directed solely against the rating on counters and bases with bins and drawers. The terms "wall counter," "wall-case base," and "shelving base" are apparently applied to the same article, which may be used as a base for wall cases or as a base for shelving. The provisions of the classification assailed, which appear under the general head of "store or office fixtures," are as follows:

L. C. L.

Counters, not otherwise indexed by name, or counter bases, for shelving or wall cases not otherwise indexed by name, wooden, with or without glazed bins or drawers: S. U. or in s. u. sections, in boxes or crates----	1½
Shelving bases, wooden, not glazed: S. U. or in s. u. sections, in boxes or crates -----	1½

These ratings were considered and approved in *National Commercial Fixture Mfrs. Assn. v. A. A. R. R. Co.* 40 I. C. C., 484, decided June 27, 1916. The complainants were parties to that proceeding and offered considerable evidence in support of their contention that counters and bases with bins and drawers should be distinguished from counters and bases of the shell type, and should

be rated first class. They now represent that in the proceeding referred to, which concerned the entire line of store and office fixtures, the facts respecting counters and bases were not fully developed. In our report in that case we said:

Counters containing bins or drawers are on an average heavier than shell counters which contain no bins or drawers. Counters of the latter type are frequently shipped k. d., but counters with the bins or drawers can not be so shipped. Complainant urges that the difference in weights between the two types of counters entitles the heavier counter, when shipped s. u. in less-than-carload lots, to a rating of first class instead of the present rating of one and a half times first class. Defendants contend that no distinction between counters with bins and those without should be recognized in the classification.

It is stated that while a counter with bins or shelves is heavier than the same counter without bins or shelves, one counter with bins or shelves will be no heavier than another counter without them. The record in this proceeding does not indicate that the present descriptions are unjust. We are of opinion and find that the present classification of counters is just and reasonable.

Substantially the same evidence was introduced in this proceeding as in the former, and the only change in transportation conditions since the hearing in the former case pointed out by complainants is a slight increase in the weight per cubic foot of the counters and bases manufactured by them. The complainants rely mainly upon the weight density of the counters and bases with bins and drawers as justifying a rating of first class. The evidence discloses a considerable range in the cubic-foot weights, apparently dependent mainly upon the kind and thickness of the material used, the shelving in the shell type, and the number and construction of the bins and drawers in the other type. For counters with bins and drawers the cubic-foot weights shown of record range from 6.5 to 9 pounds, with an estimated average of 7.5 or 8 pounds; for shell counters, 3.5 to 6 pounds, with an average of 5 pounds; for bases with bins and drawers, 5.7 to 8 pounds, with an average of 6.5 or 6.75 pounds; and for shell bases, 3.3 to 5.4 pounds, with an average of 4.5 pounds.

In *Globe-Wernicke Co. v. B. & O. R. R. Co.*, 31 I. C. C., 274, we approved the rating of one and one-half times first class on sectional bookcases, boxed, shown to average slightly in excess of 7 pounds per cubic foot, and in *Showers Bros. Co. v. A. A. R. R. Co.*, 48 I. C. C., 518, we approved a less-than-carload rating of one and one-half times first class on "kitchen cabinets, tops and bases separated only, wrapped or in boxes and crates," shown to average 6 pounds per cubic foot. In the latter case we also directed attention to exhibits of defendants which showed that the cubic-foot weights of the set-up articles considered in the *National Commercial Fixture Mfrs. Asso. Case, supra*, which are rated one and one-half times first class, ranged from 4.5 to 8.7 pounds with an average of 6.29

pounds. The official classification has never made a distinction between the two types of these commodities and it was asserted for defendants that if a distinction should be made, those of the shell type should be rated double first class by reason of their lightweight density.

No distinction between the two types of counters and bases is provided in the uniform classification descriptions. In the western classification, counters, set up, are rated first class and shelving bases or wall-case bases, set up, one and one-half times first class. Prior to January 10, 1918, both the counters and bases, set up, were rated one and one-half times first class in the southern classification, but the complainants direct particular attention to a change in that classification effective on the date named, whereby the one and one-half times first class rating is continued on set-up counters and bases without bins and drawers and a first-class rating established on those commodities containing bins and drawers. Their witnesses testify that this action was taken after a thorough and prolonged investigation, but it does not appear to what extent transportation conditions peculiar to southern classification territory may have contributed toward bringing about the change referred to.

The present rating in the official classification has applied on counters since prior to January 1, 1910. Prior to October 1, 1916, however, while shelving bases, wooden, not glazed, set up, in boxes or crates, grouped under the general head of store or office fixtures, were also rated one and one-half times first class, some of the complainants' shipments moved under a first-class rating provided under the general head of "Bases: Back bar, wall counter and bottle case (saloon, barber shop, or store): Not glazed: Crated or boxed." In the *National Commercial Fixture Mfrs. Asso. Case, supra*, we said:

It appeared at the hearing that at least one member of the complainant association ships what are known as wall counter bases. These articles are now provided for in the classification under "bases." In the light of the facts developed at the hearing defendants suggest that these articles should properly be classified with counters. Wall counter bases are quite similar in appearance to the counters containing bins or drawers. No claim that these two articles should be rated differently is made, and we are of opinion that the proposed amendment should be adopted.

Effective October 1, 1916, the classification was accordingly amended and the one and one-half times first class rating established on all store or office fixture bases. The complainants now assert that the propriety of the rating on such bases as formerly moved at first-class rating was not in issue in the *National Commercial Fixture Mfrs. Asso. Case*, and that as that increased rating became effective subsequent to January 1, 1910, the burden of its justification rests upon the defendants. Contending that this burden has not been



met, it thereupon concludes that as there is no reason for a classification distinction between those bases and the other commodities under consideration, the first-class rating must be provided on each of the commodities "to prevent unjust discrimination as between the several articles." We are not favorably impressed with this contention. While the item above quoted as naming the first-class rating on bases was not specifically referred to in the complaint in the *National Commercial Fixture Mfrs. Asso. Case*, nevertheless in that proceeding we considered the classification of the entire line of store or office fixtures, including bases; that particular item was discussed; and we expressed the opinion above quoted. Furthermore, it follows that if the rating of one and one-half times first class is reasonable on counters with bins and drawers, as we found in the *National Commercial Fixture Mfrs. Asso. Case*, the same rating is reasonable on bases with bins and drawers, both complainants and defendants conceding, and the evidence in this and the former bases showing, that there is no reason for a classification distinction between those commodities. This record amply confirms the correctness of our previous finding that the ratings assailed are not unreasonable, and we so find.

An order dismissing the complaint will be entered.

52 I. C. C.

No. 9186.

LAONA &amp; NORTHERN RAILROAD COMPANY

v.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE  
RAILWAY COMPANY.

---

*Submitted May 9, 1918. Decided January 2, 1919.*

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Divisions or allowances to the Laona & Northern Railroad out of joint rates on lumber and forest products should not exceed 2 cents per 100 pounds from certain points on the Laona & Northern to points on the defendant's line or to certain points on the lines of its connections. As the Director General of Railroads, a necessary party, is not named as a defendant, complaint dismissed.

*Goggins, Brazeau & Goggins* and *Felix J. Streyckmans* for complainant.

*Albert H. Lossow* for defendant.

#### REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

By DIVISION 2:

For some time prior to May 1, 1910, the defendant maintained joint rates with the complainant, out of which divisions were allowed the complainant in accordance with the terms of a written contract. On that date, at the instance of the defendant, those rates were canceled. Subsequently, on June 5, 1912, we found that the complainant was a common carrier; that the joint rates should be reestablished; and that the divisions of the complainant ought not in any case to exceed 1.5 cents per 100 pounds on lumber and mill products, *L. & N. R. R. Co. v. M., St. P. & S. Ste. M. Ry. Co.*, 24 I. C. C., 639: With respect to the contract above mentioned we said:

Whatever may be the rights of the parties in a court of law under that agreement we clearly have no authority to enforce it in this or any other proceeding. Before us it is only admissible as a declaration of the defendant as to what, in its opinion, would be a proper division under the circumstances.

The joint rates were thereafter reestablished and the complainant has since been allowed 1.5 cents per 100 pounds out of the rates on lumber and mill products.

52 I. C. C.

In the complaint now before us it is alleged that the complainant is entitled "as a matter of right" to the larger divisions fixed in the contract and that the Commission erred in not so finding, and we are asked to reestablish the former divisions or to require the defendant "to pay to the complainant reasonable division of the joint through rates on lumber and mill products \* \* \*." No evidence was offered warranting any modification of our finding with respect to the contract, and we have only to consider whether, with respect to the joint rates on lumber and mill products, the record justifies the allowance of divisions in excess of 1.5 cents. Rates are stated in cents per 100 pounds as of the date the complaint was filed.

The divisions provided in the contract and the pertinent facts respecting the location and character of the complainant's line are fully set forth in the case cited. It need only be stated that the lines of complainant and defendant connect at Laona Junction, Wis.; that the rates from that point are extended to the mill points on the complainant's line, including Snyders, Wis., and contiguous points north of Laona, Wis., the junction of its line with the Chicago & North Western Railway; that the distance of the mill points from Laona Junction is between 9 and 10 miles; and that since the date of our decision in the case cited there have been some extensions of complainant's line south of Snyders.

For the complainant reference is made to defendant's local carload rate of 3.25 cents applicable for a distance of 10 miles on lumber and forest products; and it is insisted that its divisions on this traffic should not be less than that rate.

Apparently there is no movement under the complainant's local rate of 2 cents per 100 pounds for a similar distance. While local rates are of value in determining proper divisions of a joint rate over the same route, the local rates here referred to afford no such criteria.

On behalf of the complainant it was testified that the present divisions are grossly inadequate, and that its financial statements for a number of years show a deficit, including interest on investment, of from \$12,000 to \$28,000. But the measure of proper divisions may not be influenced by the complainant's financial needs.

The complainant considers that the present divisions are not fair to it inasmuch as it originates the traffic, and its witness testified that the defendant allows the Wisconsin & Northern Railway, a carrier operating in the same general territory, for hauls of less than 10 miles in some cases, one-third of existing joint rates on lumber and forest products. But the defendant responds that the Wisconsin & Northern, apparently not an industrial road, has a mileage of from 100 to 150 miles and connections with a number of other carriers

52 I. C. C.

forming direct routes; and that the divisions allowed it were forced by competitive conditions. The propriety of the divisions between those respective carriers is not before us in this proceeding, and the complainant's claims are not based upon alleged discrimination in favor of the Wisconsin & Northern, nor is it established that the circumstances and conditions affecting the divisions cited are similar to those affecting the divisions under consideration.

The distances from Snyders to St. Paul and Duluth, Minn., and Chicago, Ill., points served by the defendant, are 249, 235, and 427 miles, respectively. Out of rates of 9 cents to the two points first named and 11 cents to Chicago the defendant received only 7.5 and 9.5 cents, respectively. Joint rates are maintained not only to local points on the defendant's line but also to points on the lines of a number of its connections, and out of those rates, while the complainant receives 1.5 cents, the defendant receives materially lower divisions than out of traffic destined to points on its own line. The defendant now desires to withdraw from the rates to southern Minnesota and Iowa points, which appear to have been established to meet the rates by way of more direct routes in connection with the Chicago & North Western, and the complainant raises no objection.

In *Laona & Northern R. R. Co. v. C. & N. W. Ry. Co.*, 49 I. C. C., 75, in which we found that the complainant was entitled to joint rates with the defendant, we said:

Out of joint interstate rates to and from points on complainant's line, the divisions or allowances to complainant on lumber and forest products shall not, in view of complainant's relations to the lumber company, exceed the maxima fixed in our order of July 29, 1914, in *The Tap Line Case*, 31 I. C. C., 490.

The defendant proposes to allow the complainant 2 cents per 100 pounds out of defendant's earnings on traffic to points on the defendant's line or to points beyond its rails where its earnings are equal to its locals from and to the junctions. On traffic from Snyders this would be the maximum authorized in *The Tap Line Case*, *supra*. The record discloses that certain forest products are shipped from points on the complainant's line south of Snyders, and out of joint rates applicable to some of that traffic apparently only 1.5 cents is now allowed the complainant, although the points from which the traffic moves are more than 10 miles from Laona Junction, while on other forest products the allowances appear to be in excess of the maxima approved in *The Tap Line Case*.

We find that out of the joint rates on lumber and forest products from points on the complainant's line 6 miles or more distant from Laona Junction to points on or beyond defendant's rails the complainant should receive 2 cents per 100 pounds. We express no

52 I. C. C.

opinion regarding the division of rates from points on complainant's line less than 6 miles from Laona Junction, except that in no event should the allowances to the complainant on lumber and forest products exceed the maxima fixed in *The Tap Line Case, supra*.

As the defendant railroad is now under federal control and the Director General has not been made a party defendant, an order dismissing the complaint will be entered.

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No. 10003.

W. B. BAYLESS COMPANY

v.

KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL

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*Submitted March 1, 1918. Decided December 23, 1918.*

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Charges on glass bottles, in carloads, from Poteau, Okla., to Dallas, Tex., found to have been legally applicable and not shown to have been unreasonable. Complaint dismissed.

*H. M. Gosson* for complainant.

*J. M. Souby* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, MEYER, AND HALL.

BY DIVISION 3:

This complaint, seasonably filed, alleges that the charges collected on a shipment of glass bottles, in boxes, forwarded March 14, 1916, from Poteau, Okla., to Dallas, Tex., were unreasonable and asks for reparation.

The shipment moved in two cars, the first containing 45,000 pounds and the second 21,000 pounds, the excess which could not be loaded into the first car. Charges were collected in the sum of \$182.50, based upon the applicable commodity rate of 25 cents per 100 pounds and actual weight of 45,000 pounds for the first car and 28,000 pounds, the minimum, for the second. At the time the shipment moved rule 24 of the western classification, which governed, provided, subject to certain conditions, that when carload freight, the authorized minimum weight for which is 30,000 pounds or more, is received in excess of the quantity that can be loaded in or on one

52 I. C. C.

car, the excess, if loaded in one closed car, should be charged at the actual or authorized estimated weight and at the carload rating applicable on the entire shipment. The classification rated glass bottles of the kind shipped, in boxes, fifth class, minimum 30,000 pounds, but the commodity rate legally applicable carried with it a minimum of 28,000 pounds.

The complainant submitted no evidence to show that the rate, minimum weight or tariff rules were unreasonable in and of themselves, and conceded that the only question is one of tariff interpretation, contending that under the classification rule referred to charges on the excess in the second car should have been based upon the actual weight of 21,000 pounds. With this contention we can not agree. The authorized minimum weight on this freight was 28,000 pounds, and consequently the rule relied upon was inapplicable. For the defendants reference was made to the fact that the first car was 33 feet 5½ inches and the second 40 feet 6 inches in length, and the contention made that the entire shipment could have been loaded into the larger car. Apparently by a proper distribution of the shipment the additional charges complained of could have been avoided.

We find that the charges assailed were legally applicable and that they are not shown to have been unreasonable. An order dismissing the complaint will be entered.

52 L. C. C.

No. 10039.  
SUN COMPANY

v.

TOLEDO & OHIO CENTRAL RAILWAY COMPANY ET AL

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*Submitted April 8, 1918. Decided December 23, 1918.*

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Rate legally applicable on crude oil, in tank-car loads, from Miami, W. Va., to Toledo, Ohio, found to have been unreasonable. Reparation awarded.

*E. R. Effler* for complainant.

*J. S. Patterson* for Chesapeake & Ohio Railway Company.

*W. N. King* for Kanawha & Michigan Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, MEYER, AND HALL.

By DIVISION 3:

The complainant, a corporation engaged in refining petroleum at Toledo, Ohio, seeks reparation, by complaint filed January 2, 1918, alleging that the rates charged by the defendants on 168 tank-car loads of crude oil shipped from Miami, W. Va., to Toledo, between January 2 and March 25, 1916, inclusive, were unreasonable and unduly prejudicial to the extent that they exceeded 15.3 cents per 100 pounds, the rate subsequently established. Rates are stated in cents per 100 pounds.

Miami is a nonagency station on what is known as the Cabin Creek branch of the Chesapeake & Ohio Railway, 4.8 miles south of Cabin Creek Junction, W. Va., which is the junction of the main line of the Chesapeake & Ohio and the Cabin Creek branch, and is 15.5 miles east of Charleston, W. Va. The shipments moved over defendants' lines by various routes and charges were collected on those made prior to February 18, 1916, at the applicable commodity rate of 21.5 cents, and on those made on and after that date at a rate of 16.3 cents. On February 18, 1916, the defendants, except the Wheeling & Lake Erie Railroad, published a commodity rate of 16.3 cents, but, apparently through inadvertence, did not cancel the existing rate of 21.5 cents, which was published in a different tariff, until October 19, 1917. The 21.5-cent rate was therefore legally applicable during the entire period of movement, and the shipments made on and after February 18, 1916, were undercharged 5.2 cents per 100 pounds. *Conf. Ruling 70.* The aggregate of the intermediate rates contemporaneously in effect to and from Kanawha City, W. Va., was 18.6

52 I. C. C.

cents, composed of the local fifth-class rate of 6.3 cents to Kanawha City and a rate of 12.3 cents, which was 90 per cent of fifth class, beyond. On March 26, 1916, the 16.3-cent rate was reduced to 15.3 cents, but, as previously stated, the 21.5-cent rate remained in effect until October 19, 1917, when it was superseded by the 15.3-cent rate which was also made applicable by way of the Wheeling & Lake Erie. The former departure from the provisions of the fourth section was protected by an appropriate application. On April 22, 1918, following *The Fifteen Per Cent Case*, 45 I. C. C., 303, the rate was increased to 17.5 cents.

The complainant compared the 21.5-cent rate and the subsequently established rate of 15.3 cents with a rate of 12.3 cents from Charleston to Toledo, and with rates of 13.3 cents contemporaneously applicable to Toledo from Carpenter, W. Va., a point on the Kanawha & West Virginia Railroad, 20 miles east of Charleston, and from Falling Rock, W. Va., a point on the Coal & Coke Railway, 17 miles east of Charleston. Traffic from these points to Toledo moves over the same lines beyond Charleston as that from Miami. The shipments in question were among the first shipments of oil made from points on the Cabin Creek branch, while it appears that oil had been previously shipped from Carpenter and Falling Rock. The ton-mile and car-mile earnings under the various rates mentioned are shown in the following table:

To Toledo from—	Miles.	Rate.	Ton-mile earnings.	Car-mile earnings. <sup>1</sup>
		<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Miami.....	322	21.5	13.35	44.07
Do.....		15.3	9.50	31.36
Charleston.....	302	12.3	8.15	26.88
Carpenter.....	322	13.3	8.26	27.26
Falling Rock.....	319	13.3	8.34	27.52

<sup>1</sup> Based on a weight of 66,000 pounds.

For the defendants it is maintained that the 21.5-cent rate was not unreasonable, except possibly to the extent that it exceeded the aggregate of the intermediate rates. They show that during the period of movement the general basis for rates on petroleum, including crude oil, in official classification territory, was 90 per cent of fifth-class; that the fifth-class rate from the Virginia cities to Toledo has for many years been applied from points on the Chesapeake & Ohio as far west as Malden, W. Va., including Cabin Creek Junction; that the rate on crude oil from Cabin Creek Junction to Toledo was 19.5 cents, based on 90 per cent of the fifth-class rate of 21.6 cents; and that the rate from Miami was fixed by adding the usual branch-line differential of 2 cents to the rate from Cabin Creek Junction. It is urged that the fifth-class rate from the Virginia cities is a low rate,



depressed below the New York rate by the amount of the Baltimore differential and further reduced by the water differential under the all-rail rate from Baltimore; also that the rate from Miami was reduced because they feared cross-country competition by pipe line would develop at points on the Kanawha & Michigan Railway, which applied a differential of 2 cents over Charleston from points on the other side of the Kanawha River and later reduced the differential to 1 cent. It is admitted, however, that the threatened competition never developed.

It appears that the 21.5-cent rate was published without any relation to the rate from Charleston. The fifth-class rate from Charleston to Toledo was 13.7 cents as compared with 21.6 cents from Cabin Creek Junction and 23.6 cents from Miami. The rates of 16.3 cents and 15.3 cents, however, were made with relation to the rate from Charleston.

We find that the rate legally applicable was unreasonable to the extent that it exceeded 15.3 cents per 100 pounds; that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. The carriers concerned are now under federal control and an opportunity was afforded to amend the complaint by making the Director General of Railroads a party defendant. As no amendment was filed no finding or order for the future can be made.

52 I. C. C.

No. 10194.

ACME BELTING COMPANY

v.

ABERDEEN &amp; ROCKFISH RAILROAD COMPANY ET AL.

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*Submitted September 27, 1918. Decided December 23, 1918.*

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Less-than-carload ratings of second class in official and southern classifications and first class in western classification, applicable to cotton belting, not shown to be unreasonable. Complaint and supplemental complaint dismissed.

*C. H. Rodehaver* for complainant.

*Edward D. Mohr* and *J. N. Steadwell* for southern classification lines; *W. E. Prendergast* and *Robert W. Fyfe* for western classification lines; and *D. P. Connell* and *D. T. Lawrence* for official classification lines.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, MEYER, AND HALL.

By DIVISION 3:

In its complaint filed May 20, 1918, as amended, the complainant, a corporation engaged in the manufacture of cotton belting at Niles, Mich., alleges that the ratings of second class in the official and southern classifications and first class in the western classification, applicable under the item "Belting, cotton, linen, leather, rubber, or wool, separate or combined" to less-than-carload shipments of cotton belting, are unreasonable and ratings of rule 25 in official, fourth class in southern, and third class in western classification are asked. By supplemental complaint filed after the hearing the Director General of Railroads was made a party defendant. He answered but asked no further hearing and none was had.

Cotton belting, sometimes called canvas, cotton duck, or stitched cotton belting, is manufactured from heavy cotton duck. The duck is first folded to the desired width and ply and the layers are stitched every one-fourth inch, lengthwise with the belting. It is next immersed in successive baths of waterproofing oil and paint, after each of which it is run through wringer rolls to extract the surplus dressing. It is then "cured," stretched on calendar rolls and

52 L. C. C.

finally "wound up by a friction wind." The belting is generally made four-ply to eight-ply and in 4 to 12 inch widths. For each 100 pounds of duck approximately 40 to 45 pounds of oil and paint are required. Only two weights of duck are ordinarily employed, the values of which per pound do not materially differ. It is testified that the normal value of the duck is from 20 to 25 cents per pound. At the time of the hearing its value was 65 cents per pound. The value of the paint and oil is said to be from  $7\frac{1}{2}$  to 8 cents per pound. Complainant's belting, except when for export, is shipped wrapped in paper and burlap. The weight per cubic foot of the shipping package is stated to be 51.4 pounds, but the value per cubic foot does not appear. The belting is sold per lineal foot and it was testified that the net sale price is made the substantial equivalent per pound of the cost of the duck. Approximately 55 per cent of the movement from the complainant's plant is to points in official classification territory, 37 per cent to points in southern classification territory, and 8 per cent to points in western classification territory. Cotton belting is also manufactured at various other points, the complainant's output representing a relatively small per cent of the aggregate production. Its shipments average from 400 to 500 pounds in weight.

Rule 25 and fourth class any-quantity ratings apply under the official and southern classifications, respectively, to cotton piece goods, including cotton duck, while in western classification territory, though the governing classification less-than-carload rating is first class, the exceptions thereto provide a rating of third class, and certain commodity rates are also provided on the third-class basis where there is any considerable movement. Complainant's principal contention is that the value per pound of the belting does not exceed the value per pound of the duck and therefore that the cotton piece goods bases should apply. As above indicated, cotton belting undergoes a considerable process of manufacture; and manufactured articles are generally rated higher than the raw materials. It was insisted for the defendants that various influences affecting the transportation of cotton piece goods, but not cotton belting, have resulted in abnormally low ratings on the former in the official and southern classifications.

Cotton belting is generally used only for outdoor purposes as leather belting is preferred for indoor use. Other belting in general use is Balata and so-called rubber belting, which are also treated fabrics, although the plies of duck are held together by rubber and gum fillers and are not stitched. The complainant also contends that as cotton belting has a lower value than other belting, it should

52 I. C. C.

be accorded a lower rating. While its witness testified that cotton belting sells for from one-third to one-half of the price of leather belting, it appears that the latter has an exceptionally high value at the present time. No evidence was introduced as to the value of rubber or Balata belting.

It was testified for the defendants that the proportion of Balata and leather belting in use is relatively small as compared with other belting; that the values of cotton and rubber belting overlap; that, as all belts compete and are used more or less interchangeably, and, with the exception of those made of leather, are manufactured of the same basic fabric, it is impracticable to distinguish, and the classifications have never distinguished, between them; that to attempt to do so would merely invite complaints of discrimination; and that to sustain the complaint would be to extend the present carload rating to less-than-carload shipments in western classification territory, and in effect in official classification territory, while in southern classification territory it would result in a less-than-carload rating two classes below the present any-quantity rating.

We have held that no classification can be so minute as to conform to the differing varieties and conditions of traffic, and that to separate different grades or densities of the same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification. *Casket Mfrs. Assn. of America v. B. & O. R. R. Co.*, 49 I. C. C., 327.

The complainant selected from the different classifications various articles taking the same ratings as apply on cotton belting and various other articles taking lower ratings, and contends that the first mentioned are made of higher grade raw materials and represent more highly finished articles than cotton belting, while the last mentioned are similar to its product. The mere recital of these ratings has little significance in establishing the unreasonableness of the ratings assailed and, while the complainant offered no evidence as to the transportation conditions affecting the movement of these various commodities or as to their value, weight, density, or other transportation characteristics, the defendants, directing their evidence specifically to the various articles mentioned, urge that cotton belting is accorded the same rating as many other articles, such as cotton bags, hose, awnings, and tents, which are also manufactured from cotton fabric; and that the lower ratings on other articles, such as rope, paper-lined burlap, and asbestos building felt, are due generally to the lower value of those articles, to their relationship to analogous commodities, or because they are considered raw materials. The existing ratings were established in the southern classification, ef-

fective June 1, 1900, and in the official and western classifications, prior to January 1, 1910. The record establishes that this commodity moves freely under the present basis of rates, and the complainant has offered no evidence warranting a reduction in the ratings.

We find that the ratings assailed are not shown to be unreasonable, and an order will be entered dismissing the complaint and supplemental complaint.



No. 10094.

DOYLE KIDD DRY GOODS COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY  
COMPANY ET AL.

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*Submitted August 26, 1918. Decided December 23, 1918.*

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Rates on cotton piece goods, any quantity, from Boston, Mass., and other eastern points, to Little Rock, Ark., found to have been unreasonable to the extent that they exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Memphis, Tenn. Reparation awarded.

*Lewin S. McDonald* for complainant.

*George E. Schnitzer* for Chicago, Rock Island & Pacific Railway Company.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, MEYER, AND HALL.

##### BY DIVISION 3:

In its complaint filed January 18, 1918, as amended, the complainant, a corporation engaged in the wholesale dry goods business at Little Rock, Ark., alleges that the rates charged by the defendants on various shipments of cotton piece goods, forwarded from certain points in Massachusetts, Maine, New Hampshire, Rhode Island, New York, New Jersey, and Pennsylvania to Little Rock, between January 1 and December 18, 1916, were unreasonable and in violation of the fourth section in that they exceeded the aggregates of the intermediate rates contemporaneously in effect to and from Memphis, Tenn. Reparation is asked. Apparently some of the shipments are barred by the statute of limitation. Rates are stated in cents per 100 pounds.

52 I. C. C.

Between January 1 and November 15, 1916, the defendants' joint rates on cotton piece goods, any quantity, applicable over various rail-and-water routes to Little Rock were: 93 cents from Boston, Mass., 88 cents from New York, N. Y., and 85 cents from Philadelphia, Pa. During the same period and continuing until December 18, 1916, these rates also applied from various points grouped with Boston, New York, and Philadelphia, respectively, while from other points the joint rates were fixed arbitraries over the base-point rates. Excepting one shipment which originated at Millville, N. J., from which the rate was an arbitrary of 5 cents over the Philadelphia rate, the shipments in question originated at points taking the Boston, New York, or Philadelphia rates. They moved through Memphis by way of various routes and were generally charged the applicable joint rates, although apparently some were undercharged and others overcharged. The aggregates of the intermediate rates contemporaneously in effect to and from Memphis over the routes of movement were: 85 cents from Boston and points taking the same rates and 83 cents from New York, Philadelphia, and points taking the same rates, which rates were made up of a commodity rate of 35 cents from Memphis to Little Rock, plus the fourth-class rates to that point, governed by southern classification, of 50 cents from Boston and points taking the same rates and 48 cents from New York, Philadelphia, and points taking the same rates. To Memphis, Millville took the New York rate of 48 cents and the resulting combination was 83 cents.

For the Chicago, Rock Island & Pacific Railway Company, the only defendant represented at the hearing, it was admitted that the rates complained of were unreasonable to the extent that they exceeded the respective Memphis combinations. It was explained that prior to January 1, 1916, the rates to Memphis were governed by the official classification, and the Memphis combinations were in excess of the joint rates to Little Rock; that on the date mentioned the rates to Memphis were made subject to the southern classification, which resulted in lower rates to Memphis, and consequently in the combinations on that point; and that the adjustment complained of resulted from the fact that no corresponding reductions were made in the joint rates. Effective November 15, 1916, the joint rates from the eastern base points were reduced to the level of the respective Memphis combinations, and, effective December 18, 1916, like reductions were made in the joint rates from the interior points. On March 17, 1917, these rates were further reduced to 82 cents from Boston and points taking the same rates and to 78 cents from New York, Philadelphia, and points taking the same rates. These rates remained in effect until June 25, 1918, when they were increased

under General Order No. 28 issued by the Director General of Railroads. The reasonableness of the present rates is not in issue.

We find that the joint rates legally applicable were unreasonable to the extent that they exceeded the aggregates of the intermediate rates contemporaneously in effect to and from Memphis; that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the bases herein found reasonable; and that it is entitled to reparation, with interest, on the shipments not barred by the statute of limitations. The exact amount of reparation due can not be determined on the present record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. The outstanding undercharges and the overcharges, if any, should be included in the statement submitted.

52 I. C. C.

No. 10087.

## CENTRAL PENNSYLVANIA LUMBER COMPANY

v.

SUSQUEHANNA & NEW YORK RAILROAD COMPANY  
ET AL.

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*Submitted July 24, 1918. Decided December 23, 1918.*

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Charges on a carload of lumber from Laquin, Pa., to Springfield, N. J., found to have been illegal. Reparation awarded.

*J. F. Sisley* for complainant.

*E. H. Burgess* for defendants.

## REPORT OF THE COMMISSION.

## DIVISION 3, COMMISSIONERS HARLAN, MEYER, AND HALL.

## By DIVISION 3:

In its complaint filed February 27, 1918, the complainant, a corporation engaged in the lumber business at Williamsport, Pa., seeks reparation on a carload of lumber shipped June 14, 1917, from Laquin, Pa., to Springfield, N. J., alleging that the rate charged was unreasonable to the extent that it exceeded \$2.32 per net ton.

The shipment weighed 61,400 pounds and moved as routed by the complainant over the Susquehanna & New York Railroad to Towanda, Pa., Lehigh Valley Railroad to Roselle Park, N. J., and Rahway Valley Railroad beyond. Charges were collected in the sum of \$84.12 based on a joint sixth-class rate of 13.7 cents per 100 pounds, governed by the official classification. At the time of movement the defendants maintained a joint commodity rate of \$2.32 per net ton on lumber, in carloads, between the points in question, but refused to apply that rate to this shipment on the assumption that it applied only where the Central Railroad of New Jersey participated in the movement as an intermediate carrier. The commodity rate was not so restricted and applied over the route of movement.

We find that the charges collected were illegal to the extent that they exceeded those that would have accrued at the rate of \$2.32 per net ton; that the complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate legally applicable; and that it is entitled to reparation in the sum of \$12.90, with interest. An appropriate order will be entered.



No. 10201.

ISAAC JOSEPH IRON COMPANY

v.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY  
ET AL.

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*Submitted August 2, 1918. Decided December 23, 1918.*

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Rates legally applicable on scrap iron and scrap rails, in carloads, from Houston, Tex., to Richmond, Va., not shown to have been unreasonable. Reparation awarded for overcharge on shipment of scrap iron.

*William Rentrop* for complainant.*N. M. Proctor* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, MEYER, AND HALL.

## BY DIVISION 3:

The complainant, a corporation dealing in scrap iron at Cincinnati, Ohio, seeks reparation in its complaint filed December 5, 1917, alleging that an unreasonable and unjustly discriminatory rate was charged by the defendants on three carloads of scrap iron shipped during July, 1917, from Houston, Tex., to Richmond, Va.

The shipments moved over the defendants' lines through New Orleans, La. One, weighing 94,600 pounds, consisted of scrap iron on which charges of \$396.14 were collected, and two, weighing, respectively, 82,500 and 84,900 pounds, consisted of scrap rails on which charges of \$361.97 and \$355.52 were collected. The rates legally applicable were combination rates, composed of a rate of 16 cents per 100 pounds, which applied to both scrap iron and scrap rails, from Houston to New Orleans, plus rates of \$4.50 per net ton on scrap iron and \$6.86 per long ton on scrap rails from New Orleans to Richmond. The shipment of scrap iron was overcharged \$31.93 and the shipments of scrap rails were undercharged \$62.99.

The complainant alleged that the three shipments consisted of scrap iron and asked reparation upon the basis of the rate which we find legally applicable to that commodity. Two of the shipments were not scrap iron and no evidence was offered warranting a finding that the rates applicable on scrap iron or scrap rails were unreasonable.

52 I. C. C.

We find that the rates legally applicable are not shown to have been unreasonable. We further find that the complainant was overcharged on the shipment of scrap iron to the extent of \$31.93; that it made the shipment as described and paid and bore the charges thereon; that it was damaged to the extent of the overcharge; and that it is entitled to reparation in the sum of \$31.93, with interest.

An appropriate order will be entered.

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No. 9914.

NEW ORLEANS JOINT TRAFFIC BUREAU  
*v.*  
 ABILENE & SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted November 18, 1918. Decided December 5, 1918.*

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Carload minimum of 36,000 pounds on sugar from New Orleans, La., and points taking the same rates to Texas destinations, found to subject New Orleans and points taking same rates to undue prejudice and disadvantage as compared with the carload minimum of 30,000 pounds from Sugarland, Tex., to the same destinations. Undue prejudice ordered removed.

*L. M. Nicolson and Carl Giessow* for complainant.

*Gentry Waldo, C. W. Owen, T. J. Norton, F. R. Dalsell, C. W. Brosius, Baker, Botts, Parker & Garwood, Denegre, Leovy & Chaffe,* and *Fred H. Wood* for defendant carriers.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainant alleges that the carload minimum of 36,000 pounds on sugar from New Orleans, La., and points taking the same rates to destinations in Texas, named in agent F. A. Leland's tariff I. C. C. No. 1122, was unreasonable, unjustly discriminatory, and unduly prejudicial as compared with the carload minimum of 30,000 pounds on sugar from Sugarland, Tex., and other points in Texas to the same destinations. Reference hereinafter to New Orleans will include points taking the same rates. By supplemental complaint filed September 30, 1918, with our permission, the Director General of Railroads was made a party defendant.

52 I. C. C.

Prior to April 11, 1908, the minimum on sugar from New Orleans to Texas points was 30,000 pounds. On that date the minimum was reduced to 24,000 pounds, and this was maintained until February 17, 1917, when it was again made 30,000 pounds. On May 31, 1917, this minimum was increased to 36,000 pounds, the present minimum.

*American Beet Sugar Co. v. S. P. Co.*, 41 I. C. C., 631, was a proceeding brought in behalf of sugar producers in California and, in part, attacked the carload minimum of 36,000 pounds from California points to Texas points as compared with the 24,000-pound minimum from New Orleans to the same destinations. In that report we referred to the fact that the present complainant and other organizations representing cane-sugar interests of Louisiana and Texas conceded that the carload minima should be uniform whether the traffic originate in California, Louisiana, or Texas, and on pages 638-639 said:

The record indicates that the minimum of 24,000 pounds from Louisiana is due in part to the existence of a like minimum fixed by the Texas authorities on sugar from Sugarland, Tex., to Texas common points. We think there is just ground for the contention that the higher minimum from California and the mixed carload provisions in effect from Louisiana result in unlawful discrimination against complainants by the lines which participate in the rates on sugar from both states to Texas common points. The practice in these respects should be uniform.

Upon careful consideration of the entire record, we are of opinion and find that the 85-cent rate from California to Texas common points is not unreasonable in itself. We further find that such rate subjects complainants to undue prejudice and disadvantage for the reason and to the extent that the carload minimum is higher from California than from Louisiana and because of the mixed carload provisions applicable in connection with the rate from Louisiana and not from California. As the Texas authorities are not parties to this proceeding and have had no opportunity to be heard on the question of the car minimum established on intrastate shipments of sugar, we will make no order at this time.

Effective February 15, 1917, the carload minimum on sugar for transportation within Texas was increased from 24,000 to 30,000 pounds. On April 11, 1917, the Railroad Commission of Texas authorized an increase in the intrastate minimum to 36,000 pounds, to be made effective in June, 1917. This permission was withdrawn April 17, 1917. The carriers, in compliance with the tenor of the Commission's report cited above, increased the carload minimum from New Orleans to Texas points, effective May 31, 1917, as stated.

The Railroad Commission of Texas was given an opportunity to take part in the present proceedings, but did not appear.

Under the rules and regulations of the United States Food Administration sugar is now loaded not less than 60,000 pounds per car; the result of this is that from Sugarland to destinations in Texas

two minimum carloads of 30,000 pounds each may be forwarded in the same car to two consignees and the car switched at destination without extra cost to the shipper, whereas from New Orleans 72,000 pounds must be loaded in a similar car to the same destination to avoid additional charges for switching. This situation is admitted by the defendants to be indefensible, and they show that they have done their utmost to correct it. The record substantiates the claim of complainant that the lower minimum is of advantage to the producer in the distribution of sugar, for the number of middlemen who can handle 30,000 pounds of sugar is greater than the number who can distribute 36,000 pounds.

There is no difficulty in loading a 36-foot car with 60,000 pounds and more of sugar; a 40-foot car, by actual test, will hold 102,000 pounds of sugar in bags and 90,960 pounds of sugar in barrels. There is no proof of unreasonableness of the 36,000-pound minimum. From California, Utah, and Colorado the minimum carload on sugar to Texas points is 36,000 pounds.

We are of opinion and find that the carload minimum of 36,000 pounds from New Orleans and points taking the same rates to the Texas destinations mentioned is reasonable, and that New Orleans and points taking the same rates are subjected to undue prejudice and disadvantage by the contemporaneous maintenance of a carload minimum of 30,000 pounds from Sugarland to the same destinations. An order will be issued that the defendants cease and desist from this violation.

52 I. C. C.

No. 9943.  
**AETNA EXPLOSIVES COMPANY**  
*v.*  
**CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY**  
**ET AL.**

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*Submitted December 4, 1918. Decided December 19, 1918.*

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Rate on high explosives, in carloads, from Fayville, Ill., to Atlanta, Mich., found to have been unreasonable. Measure of reasonable maximum rate prescribed and reparation awarded.

*George G. Reynolds* for complainants.

*R. Walton Moore* for Director General of Railroads.

**REPORT OF THE COMMISSION.**

**DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.**

**BY DIVISION 3:**

The complaint in this proceeding filed October 20, 1917, by the receivers of the Aetna Explosives Company, a corporation formerly engaged in the manufacture of high explosives, alleges, in substance, that the charges collected by the defendants on a carload of high explosives shipped November 3, 1915, from Fayville, Ill., to Atlanta, Mich., were unreasonable to the extent that they exceeded the charges that would have accrued at the first-class rate of 70.4 cents per 100 pounds contemporaneously applicable from Fayville to Camp 15, Mich. Reparation and the establishment of a reasonable rate are asked. By supplemental complaint filed on October 1, 1918, the Director General of Railroads was made a party defendant, and the complainants consented to the increase as provided in General Order No. 28 of the rate for the future prayed in their original complaint. The answer thereto of the Director General denies that complainants are entitled to relief and prays that the original complaint and supplemental complaint be dismissed. No further hearing was asked or had. Rates are stated in amounts per 100 pounds.

Fayville is on the Chicago & Eastern Illinois Railroad, about 4.4 miles north of Thebes, Ill. Atlanta is a local point on the Boyne City, Gaylord & Alpena Railroad, about 57 miles from Boyne City, Mich. The shipment, weighing 23,680 pounds, moved as specifically routed over the defendants' lines. Charges were collected in the sum of \$229.04, which includes stopping charges of \$10 not in issue. A combination rate of \$1.161 was legally applicable, composed of rates of 38.4 cents from Fayville to Chicago, Ill., 31.5 cents from Chicago to Kalamazoo, Mich., and 46.2 cents beyond. The shipment was undercharged \$55.88.

At the time of movement Atlanta was not shown in the tariff naming through class rates from Fayville to points on the Boyne City, Gaylord & Alpena, but that tariff carried class rates from Fayville to Camp 15 applicable over various routes, including the route of movement. It is alleged that Camp 15 is now known as Atlanta, and the present tariff publishes rates to Atlanta but not to Camp 15. The tariff does not indicate specifically that Atlanta includes what was formerly Camp 15, but from the relative positions occupied by the names of those places in the former and present tariffs it would appear that this is the fact. The first-class rate from Fayville to Camp 15 at the time of movement was 70.4 cents and applied over various routes, including the route of movement. By way of routes other than the latter it applied on high explosives, in carloads. Effective September 20, 1917, following the *C. F. A. Class Scale Case*, 45 I. C. C., 254, the 70.4-cent first-class rate to Camp 15 was increased to 85.5 cents and, effective June 25, 1918, this rate was further increased to \$1.07 pursuant to General Order No. 28 issued by the Director General of Railroads. The present combination rate legally applicable to high explosives from and to the points in question over the route of movement is \$1.815, composed of rates of 58.5 cents from Fayville to Chicago, 50.5 cents from Chicago to Kalamazoo and 72.5 cents from Kalamazoo to Atlanta.

The distance over the route of movement was 749 miles. The rate legally applicable yielded earnings of 3.1 cents per ton-mile and 36.7 cents per car-mile. The first-class rate of 70.4 cents would yield 1.88 cents per ton-mile and 22.26 cents per car-mile. We have repeatedly held that the first-class rates were the maximum reasonable rates on high explosives, in carloads. *Du Pont de Nemours Powder Co. v. C. R. Co. of N. J.*, 25 I. C. C., 19; *Same v. L. & N. R. R. Co.*, 33 I. C. C. 288; *Nitro Powder Co. v. West Shore R. R. Co.*, 35 I. C. C., 77; and *Du Pont de Nemours Powder Co. v. P. & R. Ry. Co.*, 44 I. C. C., 581.

Following the cases cited and upon this record we find that the rate legally applicable was unreasonable to the extent that it exceeded 70.4 cents per 100 pounds; and that for the future a reasonable rate on high explosives in carloads from and to the points in question over the route of movement will not exceed the contemporaneously applicable first-class rate. We further find that the Aetna Explosives Company made the said shipment and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found to have been reasonable; and that the complainants are entitled to reparation in the sum of \$52.33, with interest. The undercharges mentioned may be waived.

An appropriate order will be entered.

52 I. C. C.

No. 8275.

WESTERN CAROLINA LUMBER & TIMBER ASSOCIATION  
ET AL.

v.

SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted July 20, 1918. Decided January 7, 1919.*

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The amount of reparation due under our original findings and the parties entitled to reparation determined.

*George L. Forester* for complainants.

No appearance for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

In our original decision herein, 41 I. C. C., 753, we found that as a result of a certain ambiguous, indefinite, and unlawful tariff provision the charges collected on certain carloads of lumber shipped from points in North Carolina and South Carolina to points in New York, New Jersey, and Pennsylvania between January 25, 1913, and July 21, 1914, were unlawful to the extent that they exceeded those that would have accrued had the unlawful provision been omitted; also that two of the shipments were apparently overcharged. Reparation was found due but no order was entered, as the record was insufficient. The parties were directed to file an agreed stipulation as to the parties entitled to reparation, together with the customary statement from the complainants relative to the shipments and its verification by defendants. Proper certification as to some of the shipments was not furnished by the necessary defendants and a further hearing was held to determine the amount of reparation due and the parties entitled thereto.

The details of the shipments upon which we find that reparation is due are as shown in the table following.

52 I. C. C.

Date.	From and to—	Route.	Weight.	Rate charged.	Charges collected.	Rate found lawful.
1913.			Pounds.	Cents.		Cents.
Oct. 17	Paint Rock, N. C., to Ridgefield Park, N. J.	S. Ry.; N. Y. P. & N.; P. B. & W.; P. R. R.; W. S.	41,500	29.5	\$122.43	26
Nov. 24	Ranger, N. C., to Philadelphia, Pa.	L. & N.; N. & W.; N. Y. P. & N.; P. B. & W.; P. R. R.	34,000	30.5	103.70	28.5
Sept. 27	.....do.....	L. & N.; N. & W.; N. Y. P. & N.; P. B. & W.; P. R. R.	34,200	30.5	104.31	28.5
Nov. 29	Waynesville, N. C., to Butler, N. J.	S. Ry.; N. Y. P. & N.; P. B. & W.; P. R. R.; N. Y. Bus. & W.	61,100	29.5	180.23	26
Nov. 26	Waynesville, N. C., to Hampton, N. J. <sup>1</sup>	S. Ry.; N. Y. P. & N.; P. B. & W.; P. R. R.; C. R. R. of N. J.	42,400	27.53	116.73	26
Dec. 2	Waynesville, N. C., to Ridgefield Park, N. J.	S. Ry.; N. Y. P. & N.; P. B. & W.; P. R. R.; W. S.	59,300	29.5	174.94	26
Nov. 26	Waynesville, N. C., to South Bethlehem, Pa.	S. Ry.; N. Y. P. & N.; P. B. & W.; P. R. R.; P. & E.	46,200	27.5	127.05	24
Dec. 4	Waynesville, N. C., to Carbondale, Pa.	S. Ry.; N. Y. P. & N.; P. B. & W.; P. R. R.; N. Y. O. & W.	42,400	29.5	125.08	26
Dec. 7	.....do.....	S. Ry.; N. Y. P. & N.; P. B. & W.; P. R. R.; N. Y. O. & W.	57,700	29.5	170.22	26
Dec. 17	Waynesville, N. C., <sup>1</sup> to Kingston, N. Y.	S. Ry.; N. Y. P. & N.; P. B. & W.; P. R. R.; W. S.	50,400	29.5	148.68	26
1914.						
Jan. 27	Waynesville, N. C., to McKees Rock, Pa.	S. Ry.; N. Y. P. & N.; P. B. & W.; P. R. R.; P. & L. E.	45,400	27.5	124.85	24
Mar. 16	Dillsboro, N. C., <sup>1</sup> to West Albany, N. Y.	S. Ry.; N. Y. P. & N.; P. B. & W.; P. R. R.; N. Y. C. & H. R.	48,400	29.5	142.73	26

<sup>1</sup> Rate legally applicable.  
<sup>2</sup> Correct weight 39,800 pounds.

<sup>3</sup> Shown in original report as Flemington.  
<sup>4</sup> Shown in original report as Biltmore.

We further find that W. S. Whiting made the shipments as described and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates found lawful; and that he is entitled to reparation in the following amounts, with interest, which include the overcharges above shown:

From—	Amount.
Southern Railway Company; New York, Philadelphia & Norfolk Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; Pennsylvania Railroad Company; West Shore Railroad Company (The New York Central Railroad Company, lessee).....	\$52.93
Louisville & Nashville Railroad Company; Norfolk & Western Railway Company; New York, Philadelphia & Norfolk Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; and Pennsylvania Railroad Company.....	13.64
Southern Railway Company; New York, Philadelphia & Norfolk Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; Pennsylvania Railroad Company; and New York, Susquehanna & Western Railroad Company.....	21.37



From—	Amount.
Southern Railway Company; New York, Philadelphia & Norfolk Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; Pennsylvania Railroad Company; and Central Railroad Company of New Jersey.....	\$13. 25
Southern Railway Company; New York, Philadelphia & Norfolk Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; Pennsylvania Railroad Company; and Philadelphia & Reading Railway Company.....	16. 17
Southern Railway Company; New York, Philadelphia & Norfolk Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; Pennsylvania Railroad Company; and New York, Ontario & Western Railway Company.....	35. 04
Southern Railway Company; New York, Philadelphia & Norfolk Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; Pennsylvania Railroad Company; and Pittsburgh & Lake Erie Railroad Company.....	15. 89
Southern Railway Company; New York, Philadelphia & Norfolk Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; Pennsylvania Railroad Company; and New York Central Railroad Company.....	16. 94

An order awarding reparation will be entered.

52 L. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 490.  
LUMBER TRANSIT PRIVILEGES AT BUFFALO, N. Y.

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No. 7506.

BUFFALO LUMBER EXCHANGE AND BUFFALO  
CHAMBER OF COMMERCE

v.

ALABAMA CENTRAL RAILWAY ET AL.

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*Submitted July 26, 1918. Decided January 14, 1919.*

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Petition of certain respondents and defendants in the above-entitled cases for increased divisions of rates on carload shipments of lumber, originating south of the Ohio or west of the Mississippi and stopped at Buffalo, East Buffalo, Black Rock, or North Tonawanda, N. Y., for transit service and reconsignment, denied.

*H. D. Palmer, D. P. Connell, T. H. Burgess, and H. T. Ballard* for petitioners.

*R. Walton Moore, Charles D. Drayton, and Edward D. Mohr* for southern lines.

SUPPLEMENTAL REPORT OF THE COMMISSION.

The controversy herein considered had its origin early in 1914, when certain carriers reaching Buffalo, N. Y., from the west filed tariffs proposing to increase the rates on rough lumber, in carloads, from territory south of the Ohio and west of the Mississippi to destinations east of Buffalo, when stopped at that point for storage, inspection, assorting, kiln-drying, and subsequent reconsignment to final destination. These carriers were the Erie Railroad Company, the Lake Shore & Michigan Southern Railway Company, the Michigan Central Railroad Company, the New York, Chicago & St. Louis Railroad Company, and the Wabash Railroad Company, hereinafter referred to collectively as the Buffalo lines and individually as the Erie, the Lake Shore, the Michigan Central, the Nickel Plate, and the Wabash, respectively. Buffalo should be understood to include the neighboring points, East Buffalo, Black Rock, and North Tonawanda. It was proposed in the new tariffs to substitute for the existing through rates on such transited lumber the combination of local or proportional rates on the Ohio or Mississippi River crossings. Changes were also proposed in the transit charges at Buffalo. The tariffs were suspended, and upon investigation were found not

justified. *Lumber Transit Privileges at Buffalo, N. Y.*, 33 I. C. C., 601. As appears more fully in that report, the purpose of the Buffalo lines was to secure greater revenue on the traffic involved. The cause of the alleged deficiency was not claimed to be inadequacy of the through rates, but it was alleged to be due to the insistence of the carriers originating the traffic, hereinafter referred to as the southern lines, upon the same divisions on traffic transited and re-consigned at Buffalo as would accrue to them on shipments billed to Buffalo as final destination. The Commission said in its report, pages 605 and 608:

An increase in rates can not be justified on the ground that a particular carrier, which transports shipments over only a comparatively small portion of the entire through route, receives an unsatisfactory division of the joint rate.

\* \* \* \* \*

If the carriers are unable to agree upon divisions, they may institute appropriate proceedings and secure a determination of that matter.

Following that decision, the Buffalo lines heretofore mentioned and, in addition, the Pere Marquette Railroad Company, by petition filed October 23, 1915, asked the Commission to prescribe just and reasonable divisions of the joint through rates applied to the traffic transited at Buffalo.

On December 28, 1917, the federal government assumed operation generally of the transportation systems of the country, and a Director General of Railroads was appointed by the President to operate the railroads for the purpose that dictated the assumption of control. *Willamette Valley Lumbermen's Asso. v. S. P. Co.*, 51 I. C. C., 250. The operation of the railroads by the government has not, so far as the facts of record are concerned, changed the situation that was under consideration. In other words, the fact that the defendants are now operated as a unit might, so far as the future is concerned, render unimportant the amount of the divisions of the through charges, still we have the facts and may properly reach a conclusion with respect thereto as of the date the government assumed control.

It appears that the principal movement of the traffic is through Cincinnati, Ohio, thence northward over the Cincinnati, Hamilton & Dayton, Big Four, or Grand Rapids & Indiana to their intersection with the east and west lines of the petitioners, at Leipsic Junction, Cleveland, Toledo, Fort Wayne, or Detroit. The Nickel Plate and the New York Central, which carry the principal traffic to Buffalo from Leipsic Junction and Cleveland, respectively, assumed the principal burden for the petitioners. There is also a considerable movement by way of Toledo and the Wabash.

Through rates from the south and southwest, generally speaking, to a large portion of trunk line and New England territories apply through Buffalo. There is no controversy over the divisions of these

rates when applied to untransited traffic. The Buffalo lines request the Commission to prescribe the same divisions on the traffic transited at Buffalo as are now accepted by the southern lines on untransited traffic shipped over the same routes. Lines north of the Ohio, which form the connections of petitioners from the Ohio River and east of Buffalo, now accept the divisions of through rates, but decline to share with the petitioners the "shrinkage" in earnings due to the stand taken by the southern lines.

The effect of this variation in treatment as between through traffic and transited traffic may be illustrated by a carload of lumber weighing 63,000 pounds, shipped from South Pittsburg, Tenn., July 6, 1915, via Cincinnati and Leipsic Junction, to Buffalo, where it was stopped for transit service. On August 23, 1915, the tonnage credit was used in the shipment of a carload of lumber from Buffalo to Binghamton, N. Y. The through rate from South Pittsburg to Binghamton was 28 cents. Had the original shipment been billed through to Binghamton, the divisions and revenue would have been as follows:

	Divisions.	Revenue.
	<i>Cents.</i>	
South Pittsburg to Cincinnati.....	14.0	\$88.20
Cincinnati to Leipsic Junction.....	3.2	20.16
Leipsic Junction to Buffalo.....	5.5	34.65
Buffalo to Binghamton.....	5.3	33.39
	28.0	176.40

Upon the basis insisted upon by the southern lines, the divisions and revenue are:

	Divisions.	Revenue.
	<i>Cents.</i>	
South Pittsburg to Cincinnati.....	16.0	\$100.80
Cincinnati to Leipsic Junction.....	3.2	20.16
Leipsic Junction to Buffalo.....	3.5	22.05
Buffalo to Binghamton.....	5.3	33.39
	28.0	176.40

It will be seen that the difference in treatment affects only the southern lines and the Nickel Plate, to the extent in revenue of \$12.60 on this shipment.

It was shown that under the then existing basis of divisions, the Nickel Plate received no revenue on some shipments; and in many cases the revenues of the petitioners were so low as to be presumptively unremunerative for their service. The Buffalo lines assume all expense of inbound switching at Buffalo, but receive one-half cent per 100 pounds, minimum \$3 per car, for the transit service. The charge for outbound switching is paid by the dealer.

Petitioners take the view that divisions which are fair as applied to through shipments would be equally fair for application to shipments which travel over the same routes but are accorded transit service at Buffalo; they show that, if based upon a mileage prorata, the divisions of the southern lines would be much less than at present; and they insist that if the southern lines do not wish to join in the transit arrangements at Buffalo under the through rates, they should so restrict the routing as to prevent the movement of lumber through Buffalo. The present tariffs of the southern lines permit such routing and permit connecting lines to accord transit. They nevertheless decline to share the expense, some of their tariffs containing a clause to that effect.

The objections of the southern lines may be thus separately stated and discussed:

1. The rates to Buffalo and the divisions thereof accruing to the southern lines are not excessive.

As already mentioned, petitioners show that a mileage prorata of the through rates would give the southern lines materially less revenue from this traffic than they received. Taking as an example the shipment from South Pittsburg to Binghamton, a mileage prorata, disregarding arbitraries, would give the lines south of Cincinnati about 9.48 cents and the lines north about 18.52 cents, as against the existing divisions of 14 cents each on untransited through traffic, and of 16 cents and 12 cents, respectively, on transited traffic. The Buffalo lines do not maintain that a mileage prorata would be equitable, but claim that the then existing differences were not justified by the differences in circumstances and conditions affecting traffic north and south of the Ohio. Defendants submitted general evidence of these differences, comparing statistics of population, traffic density, etc., of the two sections, which it is not considered necessary here to present. The lines north of the Ohio received their local rates on Buffalo traffic, which accords with the general practice as to traffic from the south destined to central freight association territory. The principal fact relied upon by the petitioners was the acceptance by the southern lines of lower divisions on direct through shipments.

2. Should the southern lines participate in the transit arrangements at Buffalo they would be subjected to losses of revenue through the substitution of tonnage.

The same allegation was made in the former proceeding, and was discussed in the report, pages 606-607, as follows:

It is contended further that participation in transit arrangements at points on connecting lines would impose upon them the duty to properly and effectively police the practice in order to prevent unlawful substitution or other infractions of the law. They maintain that since, under the transit arrangement in effect

52 I. C. C.

at Buffalo substitution of tonnage is practiced, the revenues of the southern lines, in the event they were required to readjust their divisions on transit shipments, might be reduced by the use of the inbound freight bills on lumber from the south in the reshipment of lumber from western points, and that they might also incur criminal liability. On behalf of the complainants it is claimed that the lumber dealers at Buffalo are conforming to the policing rules published by the carriers and that no unlawful substitution is practiced. The legality of the transit policing rules at Buffalo and the practice of the shippers thereunder is not in issue in this proceeding, and no opinion as to that matter is expressed.

It is admitted by the Buffalo lines that their tariffs permitted the substitution of tonnage, substantially as alleged, but they maintain that such permission is no less proper in the case of lumber shipments than in the case of grain shipments, the transit rules as to the two commodities being similar. The southern lines, on the other hand, show that the rates and divisions on different kinds of southern lumber vary, and that the substitution of one kind for another in the outbound shipments from Buffalo might reduce the revenue of the southern lines below that which would have accrued if the inbound and outbound shipments were of the same variety. Further, under the rules western lumber may be shipped from Buffalo on the tonnage credit of shipments received from the south, and the southern carriers assert that this gives opportunity not only for the substitution of differently rated lumber, but that, in the absence of adequate policing, the tonnage of southern lumber consumed locally at Buffalo may be used for the reshipment of lumber from other sections. The rate situation was such as to make the use of southern tonnage credit peculiarly valuable to the Buffalo dealers. The through rates on lumber from the south to eastern points, applicable through Buffalo, due, it is said, to ocean competition were but little higher than the rates to Buffalo. For illustration, the through rate on yellow pine from Mechlin, Ala., to Buffalo, at the time of the hearing was 31 cents; to Utica, N. Y., 32 cents. On the other hand, the rates from points in Michigan, Wisconsin, and Minnesota to Utica are about 6 cents higher than the rates from the same points to Buffalo. By re-shipping western lumber to Utica on southern transit credit, therefore, the dealer is able to save on such reshipments 5 cents per 100 pounds. Such gains would, of course, be offset by corresponding disadvantages if he were required to reship southern lumber in the same amount and to the same points on western transit credit; but that this equalization takes place in practice is subject to grave doubt.

In order that the actual practice might be determined, an analysis of the lumber shipments from the south accorded transit at Buffalo in the months of June, July, and August, 1915, was made, and a statement of results was filed subsequent to the hearing, which indicates that the operation of the rules has had the results feared by

the southern lines. For example, in the period named, the New York Central received at Buffalo 23 carloads of yellow-pine lumber, all billed to Hinsdale, Mass., with stop at Buffalo. The inbound tonnage was applied to the shipment of approximately the same tonnage of oak, poplar, chestnut, maple, ash, and cypress from Buffalo to various points in New York, Massachusetts, New Jersey, and Connecticut. The origin of the lumber reshipped is not shown, but from the varieties making up the shipments defendants infer that not all of it was of southern origin. Defendants allege on brief that they received on these shipments divisions of the through rate to Hinsdale, 16.6 cents per 100 pounds, whereas if the shipments had been billed locally to Buffalo their division would have been 21 cents, thus entailing a loss to them of over \$600. If it be assumed that some portion of the outbound lumber was of western origin, the Buffalo lines derived a further advantage in securing on such portion the lower differential over Buffalo incident to the application of rates from the south, as already explained. To these objections the petitioners further reply that the handling of lumber in transit at Buffalo is properly policed by a representative of the Central Freight Association Weighing & Inspection Bureau and that the practices at that point are subject to investigation by the Commission. It appears, however, that if the petitioners' tariffs and practices could be so changed as to eliminate the possibility of substitution of tonnage, the southern lines would still object to the granting of the petition.

8. Participation in the transit arrangement would render the earnings of the southern lines uncertain pending settlement, and the readjustments of revenue would involve additional expense.

The truth of these allegations was not questioned, but no evidence was submitted showing the extent of the disadvantages. Under the rules, the outbound shipment on transit credit may be made at any time within one year, and the tonnage credit of inbound shipments may be divided among any number of outbound shipments, billed to different destinations.

4. Participation in the transit arrangement at Buffalo would necessitate similar participation at other points, to avoid discrimination, and would greatly reduce the revenues of the southern lines without any offsetting benefits.

Toledo, Ohio, and Fort Wayne, Ind., were mentioned as points at which southern lumber is rehandled under circumstances so similar to those at Buffalo that a change in the rules or practices at the latter point would presumably require a similar change at the former points. A witness for the Wabash testified that the refusal of the southern lines to accept the through proportions on lumber transited at Toledo during the past five years had made a difference of from \$30,000 to \$35,000 in the revenues of that petitioner. The

Buffalo lines assert that the transit arrangement at Buffalo benefits certain southern lines by inducing a greater movement through the Buffalo gateway; the southern lines, while admitting the truth of this allegation, assert in effect that if required to participate as desired the cost to them would more than offset any advantages realized. They contend that in order to avoid discrimination similar arrangements would be necessary at many points in central freight association territory, and on their own lines as well.

5. Some of the southern lines have the further objection that an increase in the movement through Ohio River crossings, resulting from more favorable divisions to the Buffalo lines, would cause losses to those southern lines through the diversion of traffic which now moves through the Virginia cities, on which they now have the maximum haul.

This contention was particularly emphasized in behalf of the Southern Railway Company, which now handles lumber for the east largely through the Potomac River gateway. The rates of the Southern apply from much of the southern territory to the east either through Cincinnati or through Potomac Yard. Its traffic routed through Cincinnati must be delivered to the Louisville & Nashville or the Cincinnati, New Orleans & Texas Pacific; but traffic routed through Potomac Yard is hauled to that gateway on the rails of the originating carrier. The through rate from Selma, Ala., to New York, for example, is 31 cents, which divides 18 cents to Potomac Yard and 13 cents beyond. On hardwood lumber the same rate applied over the route through Cincinnati and Buffalo divides 12 cents to Cincinnati and 19 cents beyond, the latter being the local of the northern lines. On yellow pine, however, the northern lines accept a prorate which would yield the Southern 16.1 cents. The Southern would of course be required to share with its connections the proportions south of Cincinnati. The Mobile & Ohio, on account of its thin earnings on traffic routed through Buffalo, prefers to take a shorter haul and deliver its traffic to the Southern at Meridian, Miss. From a portion of the Nashville, Chattanooga & St. Louis lines, also, the preferred route is through the eastern gateway. In behalf of all southern lines it is contended that the rates on lumber from their territories are depressed by ocean competition and that they are not in position to accept lower earnings than now accrue to them on this traffic.

6. The southern lines further contend that the privileges granted at Buffalo are of a nature that would not be permitted under their own existing tariffs.

Practically all of the outbound shipments of so-called transit lumber from Buffalo are in mixed carloads, representing several varieties



of lumber, drawn from various inbound shipments, the identity of which is lost in the transit yards. Settlement is made on the basis of the through carload rate applicable to the variety shown on the freight bill the tonnage credit of which is used in the out-billing. For example, a mixed carload of oak and walnut may be shipped from Buffalo to New York on the tonnage credit of an inbound carload of oak from Tennessee. The through rate on oak is 30½ cents, on walnut 33½ cents; nevertheless settlement would be made for the entire outbound shipment on basis of 30½ cents. Such an application of rates, it is claimed, is contrary to the present tariffs of the southern lines. A witness for petitioners testified that under the application of the transit rules each outbound shipment must contain a substantial portion of the variety of lumber shown on the inbound billing, but the analysis previously referred to herein shows conclusively that even this rule is not observed.

#### CONCLUSIONS.

The petition should be denied. The acceptance by the southern lines of lower divisions on through traffic routed via Buffalo than were accepted on traffic subject to transit services at that point, under the circumstances of record, was not unreasonable. Neither the rates nor the divisions of the southern lines on lumber destined to Buffalo have been shown unreasonable.

Transit services, among other disadvantages to the carriers, involve uncertainty, delay, and not inconsiderable expense in readjustments of earnings. The arrangement at Buffalo was established by the Buffalo lines so largely for their own benefit that it is not unreasonable to require that it be maintained at their expense. The record strongly suggests that the services were originally given in connection with traffic from the west, the natural route of which lay through Buffalo. The location of Buffalo at the eastern extremity of Lake Erie made that a convenient point of concentration and reshipment of that traffic. When the source of a large portion of the lumber supply veered from the west and northwest to the south, it was natural that the Buffalo lumber dealers should strive to retain their interest in the traffic and that the carriers should cooperate in the attempt, so far as within their power, through the medium of favorable rates and services.

Nothing that is here said should be construed as indicating a view that the petitioners should be required to continue a noncompensatory service. Where the routing of traffic is consistent with transportation efficiency, and the transit service, all things considered, can be justified as a public benefit, the service as a whole should be con-

tinued only under rates and charges which are compensatory to all of the carriers participating therein.

**McCHORD, Commissioner:**

With the exception of certain unimportant changes the foregoing is the proposed report of the examiner which was served upon the parties. No exceptions were filed thereto, and the same is adopted as the report of the Commission. An order will be entered dismissing the proceedings.

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No. 10126.

SOUTHWESTERN PAPER COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY  
ET AL.

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*Submitted July 15, 1918. Decided December 23, 1918.*

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Rate on news print paper, in carloads, from San Francisco, Cal., to Dallas, Tex., found to have been unreasonable. Reparation awarded.

*John S. Burchmore* for complainant.

*Wallace T. Hughes* for defendants.

**REPORT OF THE COMMISSION.**

**DIVISION 3, COMMISSIONERS HARLAN, MEYER, AND HALL.**

**BY DIVISION 3:**

The complainant is a corporation engaged in the paper business at Dallas, Tex. In its complaint filed April 1, 1918, it seeks reparation on four carloads of news print paper shipped from San Francisco, Cal., to Dallas between August 5 and September 20, 1916, inclusive, alleging that the rate charged by the defendants was unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul rule of the fourth section. Rates are stated in amounts per 100 pounds.

Three of the shipments, aggregating 173,580 pounds, moved over the Southern Pacific lines to El Paso, Tex., and the Galveston, Harrisburg & San Antonio and the Houston & Texas Central railways, parts of the Southern Pacific system, beyond. The remaining shipment, weighing 84,700 pounds, moved as routed by the shipper over

52 I. C. C.

the Southern Pacific to Tucson, Ariz., and the El Paso & Southwestern system, the Chicago, Rock Island & Pacific, and the Chicago, Rock Island & Gulf railways beyond. Charges aggregating \$3,874.20 were collected at the applicable fifth-class rate of \$1.50, governed by the western classification.

Effective November 13, 1916, a rate of 85 cents was established on news print paper from Dallas to San Francisco. On August 27, 1917, the defendants established a carload commodity rate of 85 cents on news print paper from San Francisco to Dallas, applicable via both of the routes traversed by these shipments. This rate remained in effect until June 25, 1918, when it was increased to \$1.065, under General Order No. 28 of the Director General of Railroads. The present rate is not attacked.

Prior to August 19, 1912, a commodity rate of 75 cents applied on this traffic via the Southern Pacific and El Paso. During the period of movement a like rate applied from Portland, Oreg., to Dallas over various routes, including that by way of the Southern Pacific and El Paso, but not the route traversed by the shipment delivered by the Southern Pacific to the El Paso & Southwestern at Tucson. For the defendants it was asserted that the 75-cent rate from Portland by way of the Southern Pacific to El Paso did not apply through San Francisco, because, it is contended, this traffic never moves that way, and that a longer haul through expensive terminals would be necessitated. In fact it is insisted that this rate, which was published in an agency tariff under omnibus instructions, in so far as it applied in connection with the Southern Pacific even by way of its short line, was established in error as it was intended to apply only in connection with shipments moving over the Union Pacific system. It was published subject to rule 77 of Tariff Circular 18-A, which is a substantial compliance with the fourth section. Shortly after the shipments moved, December 18, 1916, the Southern Pacific was eliminated as a party to this rate. The short-line distance from Portland to El Paso in connection with the Southern Pacific is 1,937 miles; the distance by way of San Francisco is 91 miles greater. On May 28, 1917, the rate from Portland was increased to 85 cents, and on June 25, 1918, under General Order No. 28 to \$1.065, the present rate.

As the rate charged on the shipments that moved by way of the Southern Pacific and El Paso represents an increase subsequent to January 1, 1910, the burden of justifying it is upon the defendants. On their behalf it is urged that the 75-cent rate from Portland was subnormal, having been established to meet competition, and stated that the Portland rate was a paper rate, as no traffic moved thereunder and that it was really used as a basing rate for two paper-

producing points in the vicinity of Portland, Oregon City, and Lebanon, Oreg., from which rates of 81.25 and 85 cents, respectively, applied to Dallas. The class and commodity rates generally from San Francisco to Dallas are group rates applying to Texas common points, and are generally the same over both of the routes by way of which the shipments concerned moved. It is admitted that the rate complained of was unreasonable to the extent that it exceeded 85 cents, and a willingness expressed to make reparation accordingly.

We find that the rate assailed was unreasonable to the extent that it exceeded 85 cents per 100 pounds. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation from the Southern Pacific Company, Galveston, Harrisburg & San Antonio Railway Company, and Houston & Texas Central Railroad Company in the sum of \$1,128.27, with interest, and from the Southern Pacific Company, El Paso & Southwestern Railroad Company, El Paso & Southwestern Company, Chicago, Rock Island & Pacific Railway Company, and Chicago, Rock Island & Gulf Railway Company in the sum of \$550.55, with interest.

An appropriate order will be entered.

52 I. C. C.

No. 8167.<sup>1</sup>

## THREE LAKES LUMBER COMPANY ET AL.

v.

## WASHINGTON WESTERN RAILWAY COMPANY ET AL.

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*Submitted October 9, 1918. Decided January 7, 1919.*

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1. Shippers of lumber on the Washington Western Railway found to be entitled to the same basis of rates contemporaneously maintained from points taking the coast-group basis of rates.
2. Rates on lumber and forest products from points on the Washington Western to interstate destinations found to have been and to be unjust and unreasonable and unduly prejudicial. Relationship of rates prescribed and reparation awarded.

*Luther M. Walter and John S. Burchmore* for complainants.

*Luther M. Walter* for Washington Western Railway Company.

*Charles Donnelly, H. A. Scandrett, and John F. Finerty* for respondents.

*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

## BY THE COMMISSION:

These cases, which are related, have been consolidated and will be disposed of in one report.

In our original report in *Joint Rates with the Washington Western Ry.*, 27 I. C. C., 630, we sustained the action of the respondents in proposing to cancel joint rates on lumber, shingles, and articles taking the same rates in connection with the Washington Western Railway Company. Subsequently upon reconsideration of the whole record, and in conformity with the principles announced in the *Tap Line Cases*, 234 U. S., 1, and *The Tap Line Case*, 31 I. C. C., 490, we held that the respondents' denial of joint rates on lumber and forest products originating at points on the Washington Western, while maintaining such rates from points on their proprietary branches, from points on the lines of other common carriers and from points on the Columbia River in connection with boat lines, subjected the Washington Western and shippers located on its lines to undue prejudice and disadvantage, which the respondents were directed, by order dated November 9, 1916, to remove. 41 I. C. C.,

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<sup>1</sup> This report also embraces Investigation and Suspension Docket No. 193, *Joint Rates with the Washington Western Railway*.

649. Prior to January 8, 1917, the date on which that order was to have become effective, the Great Northern and the Northern Pacific railroads, which had assumed the burden of defending the respondents' action, filed a petition for rehearing in which certain proposals, hereinafter referred to, were set forth, with a request that we signify whether or not the procedure outlined therein would be a sufficient compliance with our order. The proceeding was thereupon reopened for further argument on the record as made, and the effective date of the order of November 9, 1916, postponed pending such further argument. The physical characteristics of the Washington Western and its location with respect to the lines of respondents with which it connects have been set out with sufficient detail in our former reports herein.

In the respondents' petition it is proposed that the Northern Pacific cancel its contract with the Hartford Eastern Railroad, the former to operate the line now operated by the latter and maintain the present basis of rates from all points on that line; and that the Great Northern cancel its contract with the Bloedell-Donovan Lumber Company under which the lumber company had operated the Yukon Branch of the Great Northern. Counsel for the respondents advised on reargument that this branch line has since been removed. The Great Northern and Northern Pacific also propose to cancel their joint rates on lumber with the Portland Railway Light & Power Company from Chutes, Oreg., and to cancel such rates with boat lines from points on the Columbia River. These cancellations would effect a partial removal of the discrimination condemned in our report on rehearing but as it is proposed to maintain the present basis of rates from points on the respondents' respective branch lines, from points on their respective proprietary lines, and from points on the lines of other common carriers, these points would enjoy a preference which we held was unlawful.

The coast-group basis of rates on lumber from points in Washington and Oregon was fixed after an exhaustive investigation of transportation conditions as affecting the lumber industry in the northwest, the results of which are reported in *Oregon & Washington Lumber Mfrs. Assn. v. U. P. R. Co.*, 14 I. C. C., 1, and cases referred to therein. The territory served by the Washington Western is well within the group from which the coast-group rates apply. It is contended for the respondents that the blanket rate from this group is confined to points on the trunk lines and their proprietary lines and to points on certain independent lines to which the trunk lines are forced by competition to extend the group rates; and that no such competitive conditions exist with respect to points on the Washington Western. It is admitted that the Northern Pacific es-

established joint rates with the Washington Western in the first instance because the Great Northern, a competitor of the Northern Pacific for this traffic, had already done so, but that later the respondents decided to cancel these joint rates because it was determined that it was inadvisable as a matter of policy to extend the coast-group basis to points off the trunk lines unless there was strong competition compelling such action.

It is apparent that the principal objection of the trunk lines to granting joint rates to the Washington Western is the apprehension that some 80 or 90 so-called logging roads in the state of Washington, more or less similar in character to the Washington Western, will assume a common carrier status and demand joint rates with the trunk lines, on the theory that being common carriers they would be entitled of right to such rates. It is asserted that five of these logging roads have already applied for joint rates. It is further urged for the respondents that although most of the mills served by these logging roads are now located on the trunk lines at junction points, all they would need to do to place themselves in the same position as shippers on the Washington Western would be to move the mills back from the junctions and the logging roads would then be in a position to demand joint rates and divisions thereof. These assumptions, even if well founded, would form no just basis for denying the coast-group basis to shippers of lumber and other forest products on the Washington Western. The latter are obliged to meet the competition of shippers of like commodities located on the trunk lines and their proprietary branches, as well as of shippers located on the lines of other common carriers in that territory who have the benefit of the coast-group rates in marketing their products. The protestants assert that the Washington Western is the only common carrier in the state of Washington that does not carry the coast-group rates from points on its line.

From a consideration of all the facts and circumstances it is clear, and we so find, that shippers of lumber and forest products on the Washington Western are entitled to the same basis of rates accorded to shippers of like commodities located at points in the coast group on the proprietary branches of respondents, on independent branch lines or on lines of other common carriers.

The complainants in No. 8167 are the Three Lakes Lumber Company, Carlson Shingle Company, Bolcom Bartlett Mill Company, French Creek Shingle Company, and O. K. Mill Company, manufacturers and shippers of lumber, shingles, and other forest products, located on the line of the Washington Western in the state of Washington. By complaint filed July 19, 1915, they allege that the failure of the defendants to publish and maintain, subsequent to July 21, 1913, joint rates on the coast-group basis for the trans-

portation of lumber and other forest products from points on the Washington Western to various interstate destinations resulted in the application to such transportation of combination rates made up of the local rate of the Washington Western and the coast-group rates published by its connections, and that such combination rates were unjust and unreasonable; and that the maintenance by said respondents of the coast-group rates from other points in the coast group subjected complainants to undue prejudice. They ask for the establishment of joint rates on the coast-group basis from points on the Washington Western to interstate destinations and for reparation on all shipments moving subsequent to July 21, 1913. After the defendants canceled their joint rates the complainants were compelled to pay the local rates of the Washington Western to its junction with the trunk lines, in addition to the coast-group basis of rates formerly in effect and which still applies from the junction points. The rates of the Washington Western are based on distance. On lumber, other than cedar, and articles taking lumber rates, in straight or mixed carloads, the rates were 3 cents per 100 pounds for 5 miles and under, and 3.5 cents per 100 pounds for from 5 to 15 miles; and on cedar and cedar products, 4 cents per 100 pounds for 5 miles and under, and 4.5 cents per 100 pounds for from 5 to 15 miles. It was testified that complainant Carlson Shingle Company paid a flat rate of \$7.50 per car for the haul of 1.6 miles from Barstow to Machias, Wash. Under authority of General Order No. 28 issued by the Director General of Railroads, by which freight rates throughout the United States were increased effective June 25, 1918, the rates of the Washington Western above named were each increased 1 cent per 100 pounds, except that the rate of \$7.50 per car from Barstow to Machias was increased to \$15 per car.

By supplemental complaint filed September 12, 1918, the Director General of Railroads was made a party defendant and the issues were enlarged to include rates established by and under his direction and authority. No further hearing was asked or had.

Complainants' evidence was directed mainly to proof of damage because of the payment by them of rates in excess of the coast-group basis, and to show as the measure of this damage the local rates of the Washington Western, by which amounts the rates paid exceeded the coast-group rates. It was testified that practically all of the lumber and forest products shipped by the complainants were sold on the basis of the coast-group rates, the consignees paying all freight up to such basis, and that the complainants were obliged to pay the additional charges representing the local rates of the Washington Western.



The rates in effect prior to June 25, 1918, here attacked, represent increases since January 1, 1910. No evidence was offered for the defendants in support of the reasonableness of such rates, but it was urged that the intrinsic reasonableness thereof was established when the order of suspension in Investigation and Suspension No. 193 was vacated, and that therefore the only issue in the present case is one of discrimination in connection with which the question of reparation is raised. In the first report in Investigation and Suspension No. 193, 27 I. C. C., 630, the basis for the vacation of our order of suspension was the finding that with respect to the lumber of its proprietary company, Three Lakes Lumber Company, the Washington Western, then treated as a tap line, was a plant facility, from which it followed that the parent industry was not entitled to the junction-point rate at the mill. The theory that such a finding would relieve the carriers for all time of the burden cast upon them by the act is unsound.

We find that from July 21, 1913, the rates assailed in No. 8167 were, are, and for the future will be, unjust and unreasonable and unduly prejudicial to the extent that they exceeded or may exceed the coast-group basis of rates contemporaneously applicable from points on the defendants' proprietary lines, from points on independent branch lines, and from points on the lines of other common carriers in that group. We further find that on shipments made under the combination rates herein found unreasonable, on which complainants paid and bore the charges in excess of the coast-group rates, they have been damaged to the extent that the charges paid exceeded those that would have accrued under the rates herein found just and reasonable, and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined from the record before us, and the complainants should prepare statements showing the details of shipments in accordance with rule V of the Rules of Practice, including the dates on which the charges were paid, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered in No. 8167, and since the effect of this order will be to dispose of the issues raised in No. 193, an order will be entered discontinuing the proceeding in that case.

DANIELS, *Chairman*, and HALL, *Commissioner*, concur in the conclusions except in so far as the rates assailed are found to be absolutely, rather than relatively, unjust and unreasonable.

52 I. C. C.

No. 10012.  
NATIONAL POULTRY, BUTTER & EGG ASSOCIATION  
ET AL.

v.

NEW YORK CENTRAL RAILROAD COMPANY ET AL.

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*Submitted November 20, 1918. Decided January 21, 1919.*

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1. A tariff rule applied to shipments of eggs on the lines of defendants reading that "claims for broken eggs will not be considered or paid by [carriers] when the number of broken eggs in any case or crate is not in excess of 5 per cent of the contents of such case or crate" held to be unreasonable and unlawful except when applied to shipments of current receipts or current receipts rehandled.
2. A tariff rule reading "where the quantity of broken eggs in any case or crate exceeds 5 per cent of the contents thereof, claims will be considered or adjusted by [carriers] only on such number of broken eggs in each case or crate which is in excess of 5 per cent of the total number of eggs in each such case or crate" held to be unreasonable and unlawful except when applied to shipments of current receipts or current receipts rehandled.
3. A tariff rule that has the effect of disclaiming all responsibility for damage to shipments of eggs in those instances in which the case or crate shows no external evidence of damage held to be unreasonable and unlawful in that it disclaims responsibility for damage which may have been due to negligence on the part of the carrier.
4. A tariff rule that denies to consignee the right of inspection of cases of eggs that show no external evidence of damage, while other cases in the same shipment show external evidence of damage, and exacts from such consignees "good order" or "apparent good order" receipts held to be unreasonable and unlawful in that it forces from the shipper an apparent admission with regard to the shipment which may not be in accord with the facts of its condition and may subsequently be used to prevent collection of lawful claims.
5. Reasonable rules prescribed.

*Sheriff, Gilbert & Krimbill* for complainants; *M. S. Hartman* for Fairmont Creamery Company and Beatrice Creamery Company; *John S. Burchmore* and *A. W. McLaren* for Morris & Company; *Lucius C. Smith* for William J. Haire Company; *R. D. Rynder* for Swift & Company and Western Dairy Traffic Shippers' Association; and *D. W. Redfearn* for Live Poultry & Dairy Shippers' Traffic Association.

*Alton E. Briggs* for Boston Fruit & Produce Exchange, *Fred J. Schaffer* for Detroit Butter & Egg Board, and *Cassoday, Butler, Lamb & Foster* for Manufacturers of Standard Fillers, interveners.

52 I. O. O.

*T. H. Burgess, William Mann, George R. Allen, and W. J. Larabee* for defendants.

*R. Walton Moore* for Director General of Railroads.

#### REPORT OF THE COMMISSION.

##### DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

The petitioner, the National Poultry, Butter & Egg Association, is a corporation with its business office located in the city of Chicago, Ill. The petitioner, the Western Dairy Traffic Shippers' Association, is an unincorporated association with its office in Chicago. The first-named association has a membership of approximately 900 persons, firms, or corporations distributed throughout the United States. The second association has a membership of about 100 persons, firms, or corporations located in the states of Illinois, Iowa, Missouri, Nebraska, Kansas, and Oklahoma. The object of these two associations is alleged to be to promote and foster the poultry, butter, and egg industries and the interests of their members therein, to reform abuses relative thereto, and to protect the transportation and traffic interests of their members.

Complainants allege that the defendants have for several years published and placed on file with the Interstate Commerce Commission tariffs, circulars, and schedules containing rules and regulations regarding the inspection of eggs, at the time of their delivery by the defendants to the consignees and governing the adjustments of claims for the breakage of eggs during transportation by the defendants. These rules and regulations are substantially uniform among such defendants. The following rules, shown in Pennsylvania Railroad Company tariff G. O. I. C. C. 7108, effective February 15, 1916, are said to be representative of the rules applied throughout eastern trunk line territory:

Where cases of eggs are received at shipping point, and receipted for on other than order bills of lading as in apparent good order (contents and condition of contents of packages unknown) and arrive at destination in the same apparent good condition and show no external evidence of damage, no inspection of the contents of such cases will be permitted before delivery thereof to the consignee, and the consignee will be required to accept and receipt for same, subject to the same conditions under which the shipment was received for transportation, viz, as in apparent good order (contents and condition of contents of packages unknown).

Where cases show external evidence of damage, consignee shall have the privilege of inspecting the contents of such damaged cases, such inspection to be made jointly with carrier's representative and receipt taken in accordance with the actual ascertained condition of the property.

On consignments of eggs where order bills of lading are endorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.

If such inspection is had with respect to consignments which have been receipted for at point of origin as in apparent good order and arrive at destination in the same apparent good order, an apparent good order receipt will be required.

The ratings, rules, and regulations prescribed by tariffs issued by this company and in which this company is a participating carrier, and filed with the Interstate Commerce Commission, will apply as to shipments of eggs in lots of 300 cases or more, which have been rehandled and repacked and so declared by shippers on shipping order and bill of lading.

As to all shipments of eggs other than indicated above the following will govern:

"Claims for broken eggs will not be considered or paid by this company where the number of broken eggs in any case or crate is not in excess of 5 per cent of the contents of each such case or crate.

"Where the quantity of broken eggs in any case or crate exceeds 5 per cent of the contents thereof, claims will be considered or adjusted by this company only on such number of broken eggs in each case or crate which is in excess of 5 per cent of the total number of eggs in each such case or crate."

The effect of the rules quoted may be summarized in two paragraphs:

1. No claims are paid on less-than-carload shipments of eggs that may have been damaged in transit although the case shows external evidence of damage unless more than 5 per cent of the eggs in the case are broken and then only on the amount broken in excess of 5 per cent. This rule is often referred to in the testimony as the 5 per cent rule. It does not apply to rehandled and repacked eggs in shipments of 300 cases or more, but does apply to shipments of such eggs in lots of less than 300 cases.

2. The effect of the second rule, called the concealed-damage rule, may be stated as follows: No claims are voluntarily paid by the carriers on eggs which may have been damaged in transit unless the case containing the eggs shows external evidence of damage.

What is called the 5 per cent rule rests upon the assumption that the shippers ordinarily pack into cases of 30 dozen eggs approximately 18 broken or damaged eggs. It is admitted by some of the witnesses but denied by others that this is true as to cases of what are known to the trade as current receipts, which are eggs coming direct from the producer or country merchant, but all of the witnesses assert that it is not true as to eggs which have been thoroughly rehandled and repacked or as to what are known as storage-packed eggs. The latter are eggs which have been sorted and inspected with leaking, cracked, dirty, and discolored eggs removed and have been repacked in new cases with new standard fillers and necessary flats and cushions. It appears from the testimony, and it is practically admitted by both the complainants and the defendants, that it would be reasonable to continue to apply the 5 per cent rule to shipments of current receipts or rehandled current receipts, but that it is unreasonable to continue to apply such a rule to shipments of storage-

packed eggs or to shipments of current receipts when thoroughly re-handled and repacked in new cases with new standard fillers. At the hearing the carriers consented to a modification of the above rules by striking out the word "in lots of 300 cases or more."

There is left for consideration the second rule, called the concealed-damage rule, regarding claims for damage on shipments of eggs in which the cases when delivered show no external evidence of damage. This rule rests upon the assumption that if eggs are properly packed, loaded, and braced in the car shocks received in transportation that are not sufficient to break the cases or show external evidence of damage will not damage the contents of the cases.

Eggs may be damaged in transit from heating due to insufficient refrigeration or from frost due to insufficient protection, and in such instances the case will show no evidence of the condition of the eggs. There is little complaint, however, on this account. The evidence indicates that these are only minor causes of damage. It is also testified that eggs on the floor of the car are quite often damaged by water which escapes from the ice bunkers when the drainpipes become clogged with sawdust or shavings, and this damage may or may not show on the exterior of the cases when delivered to the consignee. The testimony furnished in this case leads to the conclusion that the main damage to the eggs received in transportation is due to shocks which the car receives in coupling, switching, from the application of the air brakes, or in wrecks, and that in many instances, while these shocks are not of a kind to produce any noticeable exterior damage to the case, they are sufficient to break a portion of the eggs, even when carefully packed.

The testimony discloses instances in which, upon delivery, certain cases showed exterior evidence of damage, while other cases in the same shipment showed no exterior evidence of damage, yet did, upon examination, show many eggs apparently damaged by shocks. If the eggs are properly packed, stowed, and braced in the cars it is, of course, true that the carriers are responsible for damages to eggs caused by rough handling of trains, switching, wrecks, etc., and this is just as true as to cases which show no external evidence of damage as of those that do. There is a certain hazard in the transportation of eggs that the carrier must assume. The complainants assert that the rates are at a level high enough to cover this hazard. They urge that the methods of packing eggs, loading the cars, and bracing the loads have been constantly improving and that instances of slovenly packing, loading, or bracing by shippers should not be made the excuse for the refusal by the carriers to pay the just claims of shippers. The refusal by the railroads to accord inspection of shipments of eggs, except as to cases showing external evidence of damage or to

entertain claims for damage on eggs in other than damaged cases, has led to much litigation. This is asserted to be a very unsatisfactory way of reaching a settlement of these claims. Many of the claims are for such small amounts and the expense of seeking recovery in a court is so great as to discourage claimants from seeking relief by that means.

#### PACKING.

*Fillers.*—There is much testimony in the record regarding the present methods of packing eggs in cases. The prevailing method is to use what is inaptly called the honeycomb filler with flats of strawboard between the successive layers of eggs and pads of excelsior under the bottom and over the top layers. The fillers and flats thus provide a separate space for each egg. The projecting ends or tips of the fillers rest against the sides of the case and by their resilience absorb to a certain extent the shocks to which the case may be subjected. Fillers that have been once used in transportation for any considerable distance have lost a certain amount of their resilience and no longer afford the same degree of protection to the eggs as when new. Some of the testimony indicates a disregard on the part of many shippers for the proper safeguards in the way of new fillers, excelsior pads, and sound cases. Many shipments are received in old and weakened cases, old or inferior fillers, and with newspapers or other substitutes for excelsior pads. Testimony was offered at the hearing in respect to the cup filler and its adaptation for use both for transportation and storage of eggs. This filler is made of pulpboard with indentations in which the eggs are placed, and with a cover so indented as to fit over the top of the layer of eggs. Each egg is thereby inclosed in a separate cuplike cavity.

Just prior to the last hearing in this case, experiments were conducted at the Armour Institute of Technology in Chicago, in which cases of eggs packed in cup fillers and other cases packed in honeycomb fillers were subjected to shocks somewhat similar to the shocks received in railroad transportation. In each experiment described the eggs packed in the cup fillers showed materially less breakage than those packed in the honeycomb fillers. It is proper to say that we have no reason to doubt the entire good faith of the persons performing these experiments, which appear to have been conducted for the sole purpose of ascertaining the resistance to shocks of these respective fillers. No representative, however, of the manufacturers of the honeycomb fillers was present at the tests or at the hearings at which these tests were described. By permission of the Commission, representatives of the manufacturers of the honeycomb fillers filed a brief in this case, in which it is urged that the tests conducted were by no means conclusive; that they have had no oppor-

tunity to be heard or to cross-examine witnesses; and that the tests so conducted should not form the basis for a statement by the Commission of the respective qualities of the two fillers.

So far as this record shows the cup fillers are made by but one concern. Sometime before the hearings in this case, which began in March, 1918, the factory where the cup fillers were being made was destroyed by fire. Reconstruction is now going forward and it was testified that the factory when completed would turn out enough fillers per day for 5,000 cases, and would shortly enlarge its capacity to 10,000 cases per day. Some of the witnesses expressed a doubt as to whether eggs packed in cup fillers would be susceptible of refrigeration to the same degree as in honeycomb fillers. Others expressed some doubt as to whether eggs could be handled as readily and quickly into and out of the cup fillers. Others expressed the view that the cup filler besides resisting breakage to a greater extent than the honeycomb filler prevented the contents of a broken egg from escaping, and thereby damaging other eggs, lessened the loss from evaporation and was on the whole a more satisfactory filler than any other type offered. When cup fillers are used no excelsior pads at the bottoms or tops of cases are required and the expense is practically the same as for the best grade of honeycomb filler with necessary flats and excelsior pads.

The present facilities for manufacture are not sufficient to meet the entire demands. Neither is it probable that all shippers are so thoroughly convinced of the advantages of the cup fillers for all purposes that they are ready to abandon the use of the honeycomb fillers to which they have been accustomed. The testimony indicates that the cup fillers are not particularly weakened by use, and may with safety be used again and again. None of the witnesses go to the length of urging that railroads require that eggs be packed in cup fillers before they are accepted for transportation. It would be entirely inexpedient to do this for the reason that it has not been demonstrated that new honeycomb fillers are not capable of absorbing, so far as practicable, all of the necessary shocks of ordinary railroad transportation and for the further reason that the cup fillers are not now being manufactured in quantity to supply the trade. The present classification permits the use of both cup fillers weighing not less than  $3\frac{1}{4}$  pounds per case, and honeycomb fillers and flats weighing not less than 3 pounds per case, with excelsior pads or corrugated strawboard at bottom and top of case.

*Cases.*—The classification prescribes the construction of standard egg cases and provides that where secondhand or reused cases are to be used for less-than-carload shipments they must be securely strapped with iron, wire, or wooden straps on the sides and bottom at each

end. The classification makes no such requirement as to secondhand cases in carload shipments. This rule indicates, and the testimony in this case supports the conclusion, that cases once used are ordinarily somewhat weakened and are less capable of resisting the shocks due to railroad handling than are new cases. Less-than-carload shipments, due to more handling, poorer stowing and bracing, or the presence of other articles in the car with the eggs, are subject to somewhat greater hazard in transportation than are carload shipments. There was little fault found with the packing requirements in the classification. It was suggested that secondhand cases should not be used for shipments over long distances. It was also suggested that shipments of eggs not packed in accordance with the rules of the classification should be accepted by the carriers only at owner's risk.

It was, however, very strongly urged that when shipments were packed in new fillers and cases, meeting all the requirements of the classification and were accepted by the carriers, any damage resulting from the transportation should be deemed to be due to negligence on the part of the carrier, for which it is legally liable. The proposed new classification authorizes in official classification first class less than carloads and rule 25 in carloads of eggs packed in accordance with the classification rules, and 1½ first class, less than carloads, and second class, carloads, on eggs not so packed. By this a premium will be put upon the standard packing, for shipments so packed will move at lower rates than if not so packed.

The carriers in this proceeding do not disclaim in terms responsibility for damage to shipments of eggs resulting from their own negligence, but do dispute the claim that all damage found in egg shipments upon delivery to consignee is necessarily the result of bad handling by the carrier, for which it is liable.

#### PREPACKED BREAKAGE.

The testimony of all the witnesses in this case is to the effect that storage-packed eggs or current receipts when thoroughly rehandled and repacked contain almost a negligible amount of broken eggs and very few cracked or checked eggs, that packers of eggs do not intentionally put broken or cracked eggs in cases for shipment by rail and that eggs packed for storage are generally almost entirely free from cracks or checks. The testimony of these witnesses is to a certain extent at variance with the published report of the Bureau of Chemistry of the United States Department of Agriculture, filed in the record. This bureau made a study of the conditions under which eggs were shipped during the season of 1913. The study made included the condition in which the eggs were



found when prepared for shipment at 12 packing houses. Three cases were drawn from each of 61 different shipments, making a total of 183 cases, or 5,490 dozen eggs. It was found when these eggs were examined that each case contained an average of 19.2 cracked eggs and 11.28 eggs with checks or abnormally thin-shell areas. The latter described imperfections could easily develop into cracks in the process of handling.

There is nothing in the report to show that any eggs were discovered in the cases examined in which the membrane was broken or the contents were leaking. There is the possibility that the 183 cases examined may not have been altogether representative of the 61 shipments made; that these shipments may not have been representative of other shipments; that conditions of packing in 1913 are not those of the present. The statements in this report, however, rest upon the result of an impartial and careful study for a defined purpose, and the resulting conclusion should not be disregarded on account of the statements of witnesses founded upon general and more or less casual impressions. Some of the shippers make no claims against the carriers for cracked eggs. Others make claims for all damage found. It should not be concluded, however, that if on an average 19 cracked eggs are packed in a case for shipment, these may reasonably be expected to develop into broken eggs by the necessary and ordinary shocks of transportation. The testimony in this case as to the experiments with cases containing cracked eggs which were subjected to shocks similar to those received in railroad transportation indicates that cracked eggs resist shocks almost as well as sound eggs. Entire cases of cracked eggs are shipped over the railways with little more damage than sound eggs. On the other hand, if it be true that the average case packed for shipment contains 19 cracked eggs before it starts on its railroad journey, allowance for at least that number when delivered to consignee is justified.

#### BREAKAGE BY TRUCKERS.

The egg dealers contended that the damage to shipments of eggs in going from the depot to the warehouse of the receiver is negligible; that occasionally a case may be dropped by a truckman, but that such accidents are rare, and that eggs are not damaged by being hauled by trucks or wagons over streets, however roughly paved. The testimony of other witnesses was to the effect that truckmen sometimes walked on the cases when loading them into trucks and that men in loading cars sometimes walked on the eggs in placing cases in position in the cars. Nearly all the witnesses agreed that eggs, if possible, should usually be inspected at the station or dock

of the carrier, the damage, if any, there ascertained, and the responsibility for any further damage would then rest upon the consignee into whose possession the shipment then comes.

#### INSPECTION RULES.

Under the present inspection rules applicable generally throughout eastern trunk line and central freight association territories the carriers do not permit inspection at their depots or docks of any cases of eggs unless external evidence of damage appears. Many instances are described in the record of shipments in which a limited number of cases only showed external evidence of damage, but on other cases in the same shipments no inspection was permitted, although the likelihood was strong that they had been subjected to much the same shocks as had the cases showing evidence of damage, and subsequent examination disclosed serious damage to the contents of such cases. There was much discussion in the record of the practicability of allowing such inspection of the eggs at the depot or dock of the carrier as the consignee might desire to have made. A very large percentage of the eggs shipped into trunk line territory go to New York and are delivered from car floats on the Lackawanna and other piers. The receipts are so great and the space so limited that it is difficult to devise a system of inspection that will protect both carrier and shipper in their respective rights, and not result in congestion and delay. During certain years the consignees at New York were allowed to take the eggs into their warehouses or places of business and subsequently make claims for damaged eggs. Therefrom various fraudulent practices resulted by which the carriers were seriously defrauded.

A receiver of eggs might receive several shipments on the same day over different railroads. If some of the eggs in one of the shipments were damaged, the cases containing damaged eggs were set aside and the inspector of one of the railroads was called, who made a memorandum of the apparent damage. Subsequently another inspector for another road was called, who also made a memorandum of the damage, and so on. It frequently happened that the damages resulting on one road were paid for not alone by that road, but several others. During another period inspection was permitted at the docks of all egg shipments. A certain number of cases was inspected out of each shipment, and the result of this inspection was assumed as the average for the entire shipment; that is to say, if 20 cases out of a shipment of 300 cases showed 5 dozen broken eggs, there were assumed to be 75 dozen broken eggs in the entire shipment, and payment was made accordingly. During this period, due to collusion between certain dishonest railroad inspectors and various dishonest

receivers, frauds of considerable consequence resulted, from which the carriers suffered. The present rule, which permits inspection only of cases which show exterior evidence of damage, is very unsatisfactory to the shippers and appears to result in the rejection by the railroads of many claims for which they may be legally liable. No such rule is in effect in western trunk line territory, except upon one or two roads.

The city of Chicago is a great concentrating point for eggs coming from Iowa, Nebraska, Missouri, Wisconsin, and other states. The percentage of less-than-carload shipments to Chicago is undoubtedly higher than is the case at New York. The damage claims on less-than-carload shipments are usually higher than on carloads, yet full inspection is permitted to receivers of eggs in Chicago and the testimony of receivers of eggs at that point does not indicate that any great congestion or delay occurs on account of the inspection permitted. At New York, however, a very large percentage of the eggs are delivered at the Lackawanna pier and the space on that pier that can be devoted to the egg traffic, while probably adequate for the purpose during nine months of the year, is not altogether adequate during the months of April, May, and June, which are the months of heaviest production. Lack of space for inspection, however, or any other limitation to the carrier's facilities must not be made the excuse for a rule that denies to shippers a just and lawful right. In *New York Mercantile Exchange v. B. & O. R. R. Co.*, 36 I. C. C., 156, we had occasion to deal with this inspection rule then applied at New York. The cause of the complaint in that case was stated by the Commission as follows:

The aforesaid rules of defendants and their practices thereunder are alleged to be unduly prejudicial to the traders in eggs in the metropolitan district of New York in that their enforcement has there, but not elsewhere, been delegated to the inspection bureau of the Trunk Line Association; in that said rules and their enforcement are more drastic and severe than in competing centers of the egg trade and cause greater expense to the consignee than elsewhere, notably at Chicago, Buffalo, Albany, Boston, Providence, Philadelphia, Poughkeepsie, New Haven, and Baltimore; in that they operate to make the collection of claims for loss and damage more difficult than in the cities above named; and in that they divert traffic to other centers.

The freight rate on eggs is assailed as unreasonable *per se*, but essentially on the grounds aforesaid, that while the money charge remains the same as for many years past, the inability to make proof of and obtain payment for loss and damage, which is ascribed to the aforesaid rules, makes the net cost to the egg receiver in the metropolitan district greater than previously. The aforesaid rules of the defendants are claimed to be unjust and unreasonable in that they prevent adequate and timely inspection of the contents of egg cases and thus render the proof and collection of claims for loss and damage difficult or impossible.

The complainants also make complaint of harsh and unreasonable requirements imposed by the carriers with respect to the filing of claims, and finally

ask the Commission to prescribe substitute rules governing minutely not only the process of inspection upon delivery, but the determination of conditions under which claims for loss and damage shall be presented and paid.

In that case the Commission stated:

From all the facts of record we conclude and find that the rules of defendants here involved have not been shown to be unjust or unreasonable, or unjustly or unduly prejudicial to the complainants.

When that complaint was heard the inspection rules had been in effect only one season at New York. The rules permitting inspection at warehouses or stores of consignees had been demonstrated to be a failure. The rules permitting full inspection on piers had likewise permitted fraudulent practices that were intolerable and some rule more drastic and exacting was apparently necessary. The complaint was founded chiefly, although not entirely, upon the issue of discrimination against New York as compared with other eastern markets where such inspection rules did not apply. As the conditions at the New York receiving points were in many respects dissimilar from the condition existing at other markets, the charge of discrimination could not be sustained. The rules now have general application throughout trunk line and central freight association territory. They have had the effect of greatly reducing the amount of damage claims paid on shipments to New York. How much effect they may have had in reducing the amount of damage claims paid at other eastern points the record does not show. They are, however, apparently quite unsatisfactory to the shippers and receivers of eggs wherever they apply, as evidenced by the testimony of many shippers and receivers of eggs at New York, Philadelphia, Boston, Chicago, and other points. The impression appears to be very strong that they act as a shield to the carriers to protect them from the consequences of their own negligence.

We have no jurisdiction over damage claims, as such, but we have jurisdiction over practices of carriers and tariff rules. We are convinced that the present inspection rules are too drastic in their effect and cause shippers to sign good order or apparent good order receipts for shipments or parts of shipments that are not in good order or even apparent good order. When the load in a car is shifted causing the breakage of certain cases, when it has been necessary to transfer a carload shipment from one car to another, or to recooper some of the cases, it is an indication of likelihood of damage in other cases in the same shipment. Indeed, it may be fairly said that when any cases in a shipment show external evidence of damage or have been recoopered in transit by the carrier a good order or apparent good order receipt should not be required of the consignee until he is satisfied by an inspection of such cases as he may

desire to examine that no further damage exists. We are not unmindful of the great difficulty of an efficient and careful inspection at a point of great congestion like New York and in a less degree at Philadelphia, Boston, Pittsburgh, and perhaps at other points. Neither are we unmindful of the fact that the carrier by such casual and superficial examination as it is able to make at the receiving points is unable to protect itself against breakage prior to delivery for shipment. Frauds have been perpetrated by receivers of eggs at New York that must be guarded against, there and elsewhere. The evidence with regard to the damage claims of Swift & Company shows that less than 10 per cent of the carload shipments sustained any damage in transit for which claims were filed during the years 1915, 1916, and 1917.

The Beatrice Creamery Company made 248 shipments during the three-year period ending December 31, 1917, to points in official classification territory and claims for damages were filed on but 22 shipments. These were nearly, but not entirely, all carload shipments. General testimony indicated that the percentage of less-than-carload shipments showing damage is higher than on carloads, but this is not shown with precision, and in the case of Swift & Company's shipments the damage claims are practically the same percentage of the revenue on less than carload as on carload shipments. By far the greatest part of the so-called concealed damage from broken eggs appears to be contained in shipments in which one or more cases show exterior evidence of damage. If the load has shifted in the car; if it has been necessary to transfer the load from one car to another during its transportation; if it has been necessary to recooper any of the cases before reaching destination; if any of the cases in a given shipment show external evidence of damage, it is an indication at least of a possibility of damage in the entire shipment about which the consignee should have an opportunity to satisfy himself before signing a good-order receipt.

In the course of the hearing in this case, many suggestions were made by witnesses looking to safer methods of transportation of eggs. One was that cars containing eggs should be so placarded that trainmen would be aware of their contents. Another suggestion was that special trains of eggs should be run between Chicago and New York, and perhaps between other cities, that could be given by trainmen more careful handling than ordinarily is given or necessary for other freight. A special device known as the Cutler Monesmith device for absorbing shocks has been contrived. This consists of a platform or false floor resting on rollers on which the load is carried. At each end of the car a bulkhead is placed, with strong springs between the bulkhead and the ends of the car. The load is securely

packed between these bulkheads, and the ordinary shocks which the car suffers by reason of rough switching or coupling or the application of the air brakes is absorbed by the springs. Three cars are equipped with this device, and have been extensively used for the transportation of eggs for several years with results which, so far as this record shows, were very satisfactory to the shippers of eggs therein and to the transportation companies. It was very earnestly urged that the carriers should equip a considerable number of cars with this device in the interest of conserving a valuable food product and reducing the actual amount of damage for which they are liable. While all of these suggestions are worthy of careful consideration by the carriers in their own interest, no power is given us under the act to regulate commerce to require the carriers to placard their cars as proposed, to run special egg trains, or to equip their cars with this special device.

#### SUGGESTED CONCLUSIONS.

1. A tariff rule applied to shipments of eggs which asserts that claims for broken eggs will not be considered or paid by the carrier when the number of broken eggs in any case or crate is not in excess of 5 per cent of the contents of such case or crate, held to be unreasonable and unlawful, except when applied to current receipts or current receipts rehandled.

2. A tariff rule asserting that when the quantity of broken eggs in any case or crate exceeds 5 per cent of the contents thereof, claims will be considered or adjusted by the carriers only on such number of broken eggs in each case or crate which is in excess of 5 per cent of the total number of eggs in each such case or crate, held to be unreasonable and unlawful, except when applied to shipments of current receipts or current receipts rehandled.

3. A tariff rule applied to shipments of current receipts or rehandled current receipts that asserts that claims for broken eggs will not be considered or paid by the carrier when the number of broken eggs in any case or crate is not in excess of 5 per cent of the contents of such case or crate not found to be unreasonable or unlawful.

4. A tariff rule applied to shipments of current receipts or rehandled current receipts that asserts where the quantity of broken eggs in any case or crate exceeds 5 per cent of the contents thereof, claims will be considered or adjusted by the carriers only on such number of broken eggs in each such case or crate in excess of 5 per cent of the total contents of each such case or crate, not found to be unreasonable or unlawful.

5. A tariff rule that has the effect of disclaiming all responsibility for damage to shipments of eggs in those instances in which

the case or crate shows no external evidence of damage while other cases in the same shipment show external evidence of damage, held to be unreasonable and unlawful in that it disclaims responsibility for damage which may have been due to negligence on the part of the carrier.

6. A tariff rule that denies the right of inspection to shippers of cases of eggs that show no external evidence of damage while other cases in the same shipment show external evidence of damage, and exacts from such shippers good order or apparent good order receipts, held to be unreasonable and unlawful in that it forces from the shipper an apparent admission with regard to the shipment which may not be in accord with the facts, and may subsequently be used to prevent the collection of lawful claims.

7. Shippers of eggs should be required to note on the bill of lading the character of the shipment, whether current receipts, rehandled current receipts, rehandled and repacked current receipts, or storage packed.

8. If it has been necessary for the carrier to reappear any of the cases during transportation or to transfer a carload from one car to another, or if the load or any part of it has shifted, or if any cases in the shipment show external evidence of damage, the consignee should be accorded an inspection of all the cases he may deem necessary to determine the condition of the shipment, and receipt should be given in accordance with the ascertained condition of the shipment.

9. Where the carrier determines that space at the carrier's station does not admit of the examination there of a given shipment which requires inspection, the consignee shall be entitled to demand an examination of such shipment at his own warehouse. Upon demand made therefor at the time of receiving the eggs, even though space does so admit, the carrier may at his option elect to have the examination at the warehouse of the consignee or such other place as the two may agree. Such inspection shall be a joint inspection and shall be made within 24 hours of the time of the receipt of the eggs. The carrier shall have the right in such instances to stencil the cases so delivered or examined for purposes of identification. No cases should be opened until both parties are present.

10. Upon discovering eggs deteriorated by heat or cold in any shipment, the consignee shall be entitled to a joint examination of the entire contents of the shipment.

11. In so far as any of our conclusions expressed in regard to the contentions made in *New York Mercantile Exchange v. B. & O. R. R. Co.*, *supra*, are in conflict with the foregoing findings, they are hereby set aside.

**WOOLLEY, Commissioner:**

Except for certain minor corrections, the above report is as proposed by the examiner who heard the evidence in the case. Subsequent to its service upon the parties, but prior to the argument the complaint was amended to include the Director General of Railroads as a defendant. That official requested no further hearing in the case.

At the argument it was urged by counsel for the complainants that the inspection which it is proposed to require would not disclose all cases of damage and that shippers should be permitted to inspect, prior to acceptance, at least ten cases out of every shipment. An examination of the record shows that while the necessity for such inspection was claimed at the hearing the evidence offered did not show it. The records of Swift & Company and of the Beatrice Creamery Company for stated periods show that claims for damage in transit were presented in connection with less than one egg shipment in ten, and the testimony of all of the shippers, of whom there were many, leads to the conclusion that the application of the inspection rules proposed in the above report would disclose all but a small percentage of the damage occurring in transit. On the other hand it was shown clearly that inspection of ten cases out of every shipment would result in serious congestion and delay in delivery at the different receiving points in New York City, Philadelphia, and Boston, and possibly at other places. The three cities named are such important markets for eggs that the conditions there existing can not be disregarded.

It was contended by counsel for the defendants that the establishment of the rules proposed by the examiner would result in inspection in many instances in which no damage caused by the carriers would be disclosed. Any rules even approximately fair to the shippers would have that effect, owing to the nature of the commodity and of its transportation, and in our opinion the rules proposed as nearly fit the conditions and circumstances of the case as any that can be devised at this time.

It is our opinion, and we so find, that the conclusions proposed in the above report are warranted by the record in the case, and we therefore adopt the report as the report of the Commission. Nothing therein contained precludes the carriers, by appropriate tariff rule, from requiring a disclosure by shippers of the condition of the shipments when offered for transportation. Should application of the rules prescribed be found unsatisfactory or should the rules prove in any respect inapplicable to future conditions, the matter may be brought to our attention for such further action as the circumstances warrant. An appropriate order will be entered.



No. 9052.  
**LEHIGH VALLEY COAL SALES COMPANY**  
*v.*  
**LEHIGH VALLEY RAILROAD COMPANY.**

*Submitted May 14, 1917. Decided January 7, 1919.*

Following *Delaware, Lackawanna & Western Coal Co. v. R. R. Co.*, 46 I. C. C., 506, 49 I. C. C., 203, claims for reparation on anthracite coal, in carloads, from points on the Lehigh Valley Railroad in the Wyoming, Lehigh, and Schuylkill anthracite coal regions in Pennsylvania, to certain interstate points on the Lehigh Valley Railroad denied. Complaint dismissed.

*Nicholas W. Hacker* for complainant.

*Stewart C. Pratt* and *E. H. Boles* for defendant.

**REPORT OF THE COMMISSION.**

By the COMMISSION:

The complainant herein seeks reparation for alleged unreasonable rates charged by defendant on anthracite coal, in carloads, shipped between May 1, 1914, and April 1, 1916, from points in the Wyoming, Lehigh, and Schuylkill regions in Pennsylvania to points in New York, New Jersey, and Pennsylvania. Some of the shipments to points in Pennsylvania moved over intrastate routes, and therefore are not within our jurisdiction.

In *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, hereinafter termed the *Anthracite Case*, we found that the rates then in effect on anthracite coal, in carloads, from points in the Wyoming, Lehigh, and Schuylkill regions in Pennsylvania to many interstate destinations, including tidewater points, were unreasonable, and prescribed reasonable maximum rates for the future. The new rates became effective April 1, 1916. Prior to that date the complainant made numerous shipments of anthracite coal over defendant's lines from points in the Wyoming, Lehigh, and Schuylkill regions to tidewater for transshipment by water, and to interior points, and paid the rates found to be unreasonable in the *Anthracite Case*. It is contended that the rates charged prior to April 1, 1916, were unreasonable to the extent that they exceeded the rates found reasonable in the *Anthracite Case*.

The same question as to reparation was before us in *Delaware, Lackawanna & Western Coal Co. v. R. R. Co.*, 46 I. C. C., 506; 49 I. C. C., 203, wherein we denied reparation. Following that case, and for the reasons stated therein, reparation is denied here. An order dismissing the complaint will be entered.

No. 9779.

HARRISONBURG MILLING COMPANY ET AL.

v.

ANN ARBOR RAILROAD COMPANY ET AL.

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*Submitted November 25, 1918. Decided January 2, 1919.*

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Complaint alleging rates and regulations applied to the transportation of grain from points in central freight association territory and in the states of Pennsylvania, Maryland, West Virginia, and Virginia to Toms Brook, Edinburg, New Market, Broadway, Linville, Harrisonburg, Bowling, and Staunton, Va., for milling and shipment of the products to points in Carolina territory, to be unreasonable and unduly prejudicial, dismissed.

*J. A. Henderson and W. Jett Lauck* for complainants.

*R. Walton Moore, Merrel P. Callaway, and Charles D. Drayton* for Atlantic Coast Line Railroad Company, Cincinnati, New Orleans & Texas Pacific Railway Company and others.

*A. J. Anderson* for Baltimore & Ohio Railroad Company.

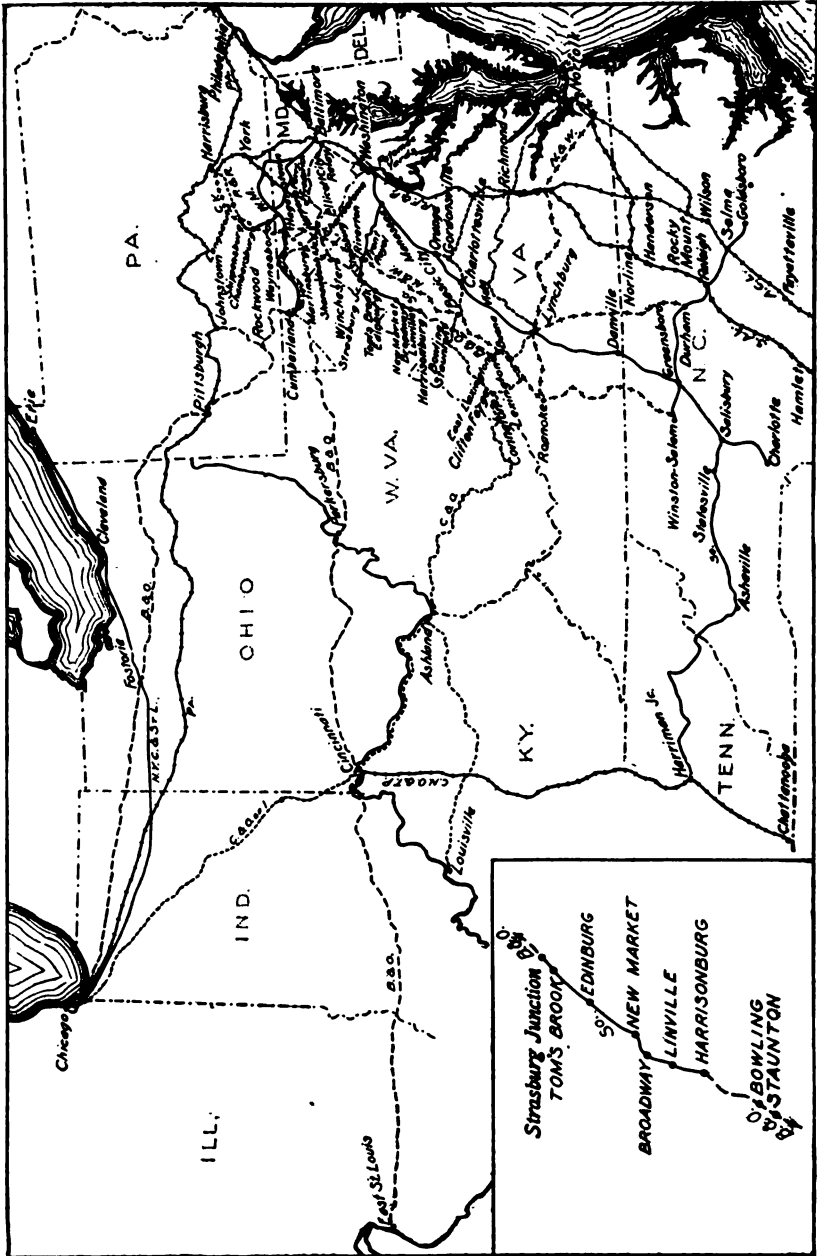
#### REPORT OF THE COMMISSION.

##### DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

As shown on the accompanying map, a branch line of the Southern Railway extends from Manassas, Va., through Strasburg Junction, Toms Brook, Edinburg, New Market, Broadway, and Linville, Va., to Harrisonburg, Va., and connects at the latter point with a line of the Baltimore & Ohio Railroad which extends in a southwesterly direction from Harrisonburg through Bowling and Staunton, Va., to Lexington, Va. In this proceeding millers of wheat located at Toms Brook, Edinburg, New Market, Broadway, Linville, Harrisonburg, Bowling, and Staunton, hereinafter collectively termed the complaining milling points, bring in issue the rates and regulations on grain shipped from points in central freight association territory and also from points in the states of Pennsylvania, Maryland, West Virginia, and Virginia, hereinafter termed the eastern points, to the complaining milling points, milled there, and the products shipped to destinations in Carolina territory. It is alleged that the present rates and regulations are unreasonable and also unduly prejudicial to complainants in favor of their competitors at Lynch-

52 I. C. C.

burg, Va., and other specified Virginia and North Carolina milling points. The prayers of the complaint are:



1. That on grain from points in central freight association territory . . . when milled at the mills of your petitioners at points on the Southern Railway between Strasburg Junction and Harrisonburg, Va., including the

latter point, and at Bowling, Va. \* \* \* when the manufactured product is reshipped to Carolina territory, that the route via Harrisonburg, Staunton, and Charlottesville, Va., and the Southern Railway and connections be established on the basis of the grain rate to Virginia cities plus the grain product rate outbound \* \* \* and when moving back through Strasburg Junction, Va., and the Southern Railway that the same basis of rates apply, plus 1 cent per 100 pounds penalty for backhauling to Strasburg Junction, Va.

2. That on grain originating in the east and interior east \* \* \* moving via Potomac Yards or Strasburg Junction, Va., and milled in transit into grain products and reshipped to Carolina territory that the route through Staunton and Charlottesville, Va., be established and that the rate applicable on grain products be protected from the origin of the grain to the ultimate destination of the grain product \* \* \*.

3. That when grain moves from the east and interior east to the mills of your petitioners located on the Southern Railway between Strasburg Junction and Harrisonburg, Va., including Harrisonburg, Va., to be converted into grain products and the grain products moved to Carolina territory via Strasburg Junction and the Southern Railway, that the rates on the manufactured products be protected from the origin of the grain to ultimate destination of the product, plus a penalty for backhauling of 1 cent per 100 pounds.

4. That at Staunton, Va., should the grain from the east and interior east move via Potomac Yards, Va., and the Chesapeake & Ohio Railway or via Hagerstown, Md., or Martinsburg, W. Va., and Basic, Va., that the rate applicable on the grain products from the origin of the grain to the ultimate destination of the manufactured product be protected, plus 1 cent per 100 pounds to cover the back haul to Charlottesville, Va.

5. That rates on grain products be ordered published by such lines as at present may not have through rates from the east and west via the routes specified in this petition, the rates to be the same as are now operative via other routes.

All of the evidence submitted relates to rates on wheat and flour. Rates herein are stated in cents per 100 pounds, and the rates shown as being now in effect are the rates that were applicable at the time of the hearing.

The production of wheat in the territory surrounding the complaining mills is relatively light and complainants draw most of their wheat from other territories. The mills on the Harrisonburg branch draw from both central freight association and eastern territories; the mills at Staunton and Bowling principally from central freight association territory. The mills of complainants have a capacity of approximately 2,000 barrels of flour per day; their daily output is approximately 1,500 barrels. Most of this flour is sold in Carolina territory where sharp competition is met from mills in the Virginia cities and the Carolinas. Complainants testified that they can not reach markets in other sections because of unfavorable rate adjustments. It was also testified that the complaining mills are not being operated to their full capacity because of the inability of complainants to find a market for all the flour they can produce. Complainants feel that under the adjustments here asked they could

market in Carolina territory all the flour they can produce, and that their sales would increase to the extent that would justify a material enlargement of their present milling facilities.

THE ADJUSTMENT FROM CENTRAL FREIGHT ASSOCIATION TERRITORY.

No joint rates are in effect on grain or grain products from points in central freight association territory to destinations in Carolina territory. Through rates are made by combinations on the Ohio River or Virginia cities, whichever makes lower; in practically all instances the rates make on Virginia cities. From Chicago, Ill., which is representative of the points in central freight association territory, the rate on wheat, in carloads, to Lynchburg is 13.8 cents. This rate is made by the Chesapeake & Ohio Railway, the short line, 755 miles. The Southern Railway and the Baltimore & Ohio meet this rate over the route through Strasburg Junction, 977 miles. The same rate is applied to all of the complaining milling points. The distances from Chicago to these points are greater than the short-line distance from Chicago to Lynchburg. For example, the distance from Chicago to New Market is 807 miles, 52 miles greater than the distance by way of the Chesapeake & Ohio from Chicago to Lynchburg. Rates on flour, milled from grain originating in central freight association territory, from points on the Harrisonburg branch, except Edinburg, to points in Carolina territory are uniformly 2.5 cents higher than the corresponding rates from Lynchburg. For example, the rate from Lynchburg to Raleigh, N. C., is 15 cents, carloads, and 17 cents, less than carloads. The corresponding rates from points on the Harrisonburg branch are 2.5 cents higher, except from Edinburg, and apply only via Strasburg Junction and Manassas. Local rates on flour from points on the Harrisonburg branch to points in Carolina territory are generally 5 cents higher than the corresponding rates from Lynchburg. No proportional rates apply from Edinburg due to an error in tariff publication. The rate from Bowling to Raleigh is 25 cents, any quantity. Shipments from Bowling must move over three lines to reach Lynchburg, while shipments from points on the Harrisonburg branch move to Lynchburg over the Southern Railway all the way. As above shown, what complainants seek in this respect is an adjustment whereby grain from the west may be milled by them and the products reshipped to points in the Carolinas through Staunton, Charlottesville, and Lynchburg on basis of the aggregates of the rates on wheat from points in central freight association territory to Lynchburg and the rates on flour thence to destinations; when the movement of the products is via Strasburg Junction and Manassas they desire a basis 1 cent over the Lynchburg combinations.

The distances from points on the Harrisonburg branch south of Strasburg Junction to Lynchburg are less through Staunton than through Strasburg Junction and Manassas. For example, from New Market the distance is 145 miles via Staunton and 232 miles via Manassas. However, the route through Staunton involves three lines as compared with the one line haul via Manassas and, moreover, it is apparent from the record that the latter route is more expeditious and, perhaps, more economical, although the distance is greater.

Rates on flour, milled from wheat originating in central freight association territory, from Lynchburg and points on the Harrisonburg branch to destinations in Carolina territory are materially lower than the rates maintained prior to the year 1914. Prior to June, 1914, mills at Lynchburg could draw wheat from Chicago, mill it and forward the flour to points in Carolina territory at local rates to and from Lynchburg which were approximately the same as the through rates on flour from Chicago to the Carolina destinations. In other words the basing rates from the Virginia cities on flour from Chicago were practically the same as the local rates from Virginia cities. In June, 1914, following negotiations which had been pending with the North Carolina authorities, through rates on grain products from points in central freight association territory to destinations in Carolina territory were reduced 6 cents on carload shipments and 4 cents on less-than-carload shipments. This had the effect of placing the Virginia cities at a disadvantage of 6 cents and 4 cents on carload and less-than-carload shipments, respectively, as compared with the rates obtaining from mills in central freight association territory. In August, 1914, following these reductions the carriers established proportional rates from Virginia cities, on flour milled from wheat originating in central freight association territory, which rates were 6 cents and 4 cents lower, respectively, than the corresponding local rates. When these reductions were made corresponding reductions were made in the carload and less-than-carload rates from points on the Harrisonburg branch in order to maintain the relative adjustment which had been maintained prior to that time as between the rates from Virginia cities on the one hand and the rates from points on the Harrisonburg branch on the other, and this adjustment still obtains.

The complaining milling points, except Staunton, are not on a direct route from points in central freight association territory to destinations in Carolina territory, and hence are disadvantageously located, as compared with milling points on the direct routes. There is no complaint as to the present adjustment at Staunton on grain from the west.

Upon all the facts disclosed the Commission should find that the present adjustment on wheat from the west milled at points on the Harrisonburg branch southwest of Strasburg Junction and at Bowling and the products shipped to destinations in Carolina territory, is not unreasonable or otherwise unlawful, except that from Edinburg to points in Carolina territory the rates on flour, milled from wheat originating in central freight association territory, should be reduced to the basis of the rates on like traffic from other points on the Harrisonburg branch southwest of Strasburg Junction.

#### THE ADJUSTMENT FROM THE EAST.

The eastern grain originating points involved are located on the Philadelphia & Reading Railway and the Cumberland Valley, the Western Maryland, and the Baltimore & Ohio railroads. Joint through rates apply on grain and grain products from these eastern points to destinations in Carolina territory over various routes, but in no instance through Strasburg Junction, Staunton, and Charlottesville. From points on the Philadelphia & Reading to Raleigh, for illustration, the joint rates apply through (a) Potomac Yard and (b) Hagerstown, Md., in connection with the Norfolk & Western. The tonnage actually moves over the latter route. From points on the Cumberland Valley the joint rates apply through (a) Norfolk, Va., (b) Potomac Yard, (c) Pinners Point, Va., (d) Portsmouth, Va., and (e) Hagerstown Transfer, Md. The rates from points on the Western Maryland and also from points on the Baltimore & Ohio west of Washington Junction, Md., apply over various routes, including the route through Strasburg Junction and Manassas. From points on the Baltimore & Ohio east of Washington Junction the joint rates apply through (a) Potomac Yard, and (b) Shenandoah Junction, W. Va.

Under the present adjustment grain may be shipped from the eastern points to intermediate milling points on the routes via which joint rates to destinations in Carolina territory apply, milled, and the products reshipped to destinations in that territory on basis of the joint rates on the products from points of origin of the grain to destinations of the products. Since no joint rates apply through the complaining milling points, this basis is not available to complainants. However, in all instances where joint rates apply on grain products from the eastern points to destinations in Carolina territory through Strasburg Junction and Manassas, milling in transit is available at the complaining milling points on the Harrisonburg branch, except Edinburg, on basis of these joint rates, plus off-line charges for the movement from Strasburg Junction to the milling points and return. The distances from Strasburg Junction to Tome

Brook, Edinburg, New Market, Broadway, Linville, and Harrisonburg are 5, 16, 31, 37, 43, and 49 miles, respectively. The off-line charges are 2 cents on shipments milled at Toms Brook, 3 cents on shipments milled at New Market and Broadway, and 4 cents on shipments milled at Linville and Harrisonburg. Due to an error in tariff publication, Edinburg is not named as a milling point in the transit tariff of the Southern Railway, and on shipments milled at that point the full combinations are applicable. No milling in transit is available at Bowling or Staunton on grain from the east, except on basis of the aggregates of the rates on grain to those points and on the products thence to destinations.

Longsdorf, Pa., may be taken as representative of the grain-originating points on the Philadelphia & Reading, and Raleigh as representative of the destinations in Carolina territory. The distance from Longsdorf to Raleigh is 490 miles via Potomac Yard in connection with the Southern Railway beyond, 482 miles through Hagerstown Junction and Winston-Salem, N. C., and 494 miles via Strasburg Junction, Staunton, and Charlottesville. The joint rate on flour, any quantity, over the available through routes from Longsdorf to Raleigh is 33 cents, any quantity, and this rate applies on wheat shipped to Lynchburg, for example, milled, and the products reshipped to Raleigh. The rate on wheat from Longsdorf to Harrisonburg, is 18 cents, the Virginia cities' basis, and on flour thence to Raleigh, 26 cents, aggregating 44 cents, or 11 cents over the basis available at intermediate milling points on the routes via which joint rates apply on grain products from Longsdorf to Raleigh. The movement of traffic from points on the Philadelphia & Reading to Raleigh via Hagerstown is over three lines, while the movement through Strasburg Junction and Staunton is over seven lines.

The situation with respect to points on the Cumberland Valley is substantially similar to that from points on the Philadelphia & Reading. Complainants ask that routes be established from Cumberland Valley stations via the initial line to Winchester, Va., Baltimore & Ohio to Strasburg Junction, Southern Railway to Harrisonburg, Baltimore & Ohio to Staunton, Chesapeake & Ohio to Charlottesville, and Southern Railway beyond. The movement over this route would, in effect, require a service by six lines.

From Frederick, Md., typical of the grain originating points west of Washington Junction on the Baltimore & Ohio, the joint rate on grain products to Raleigh is 26 cents. This rate applies through (a) Strasburg Junction and Manassas, (b) Potomac Yard, and (c) Shenandoah Junction, W. Va., via the Norfolk & Western and its connections beyond. The short-line distance from Frederick to Raleigh is 342 miles through Potomac Yard and Richmond, Va.



The distance through Potomac Yard and Lynchburg is 524 miles, through Strasburg Junction and Manassas 482 miles, through Strasburg Junction and Staunton 463 miles, and through Hagerstown, in connection with the Norfolk & Western, 495 miles. Milling in transit is available at points on the Harrisonburg branch on grain from Frederick on basis of this joint rate, plus off-line charges for the movement from Strasburg Junction to the milling points and return, the off-line charges being the same as above shown. On grain milled at Staunton and Bowling the full combinations, aggregating approximately 37 cents in each instance, are applied.

On June 8, 1911, the Southern Railway, in response to request from millers on the Harrisonburg branch southwest of Strasburg Junction, opened the route through Strasburg Junction, Staunton, and Charlottesville for grain from a few points on the Baltimore & Ohio west of Washington Junction, including Frederick, and milling in transit was accorded Harrisonburg branch points southwest of Strasburg Junction on basis of the joint rates on the products from the points of origin of the grain to the destinations of the products. The rates over this route were the same as the rates over other routes via which joint rates applied. The witness for the Southern Railway testified that shortly after the joint rates were established over this route mills at Rockingham, Va., and other points south of Harrisonburg not accorded transit on basis of the through rates, demanded that they be placed on the same basis as their competitors on the Harrisonburg branch. It became necessary to cancel the route through Harrisonburg or else to accord transit to points south, and the route was therefore closed, effective July 1, 1913. The cancellation of this route was contemplated for some time prior to that date, but at the request of millers on the Harrisonburg branch the route was not canceled sooner, so that these millers could dispose of the products of grain which they had purchased with the expectation of milling and shipping the products to Carolina territory on basis of the rates on the products from the points of origin of the grain to the destinations of the products.

It was further testified that during the period the joint rates were in effect over this route, the participating carriers were not satisfied with the divisions which they received, and that this resulted from the fact that the rates were too low for the respective services performed. For the entire service performed by the Southern Railway in moving a car of grain from Strasburg Junction to Toms Brook, for example, and the products thence to Harrisonburg for delivery to the Baltimore & Ohio, it received a maximum revenue of \$4 per car which also included the transit services. The 26-cent joint rate formerly in effect over this route from Frederick to Raleigh, for

52 I. C. C.

example, was divided among the participating carriers as follows: Baltimore & Ohio to Strasburg Junction, 75 miles, 4.5 cents; Southern Railway thence to Harrisonburg, 49 miles, 2 cents; Baltimore & Ohio from Harrisonburg to Staunton, 26 miles, 2 cents; Chesapeake & Ohio from Staunton to Charlottesville, 39 miles, 3 cents; and Southern Railway from Charlottesville to Raleigh, 286 miles, 14.5 cents. It is observed that the division accruing to the Southern Railway for the haul south of Charlottesville was less than its proportional rate from Lynchburg to Raleigh on grain products from the west, although the distance from Charlottesville is 60 miles in excess of the distance from Lynchburg.

The situation with respect to points on the Western Maryland is substantially similar to that obtaining from points on the Baltimore & Ohio west of Washington Junction, and need not be discussed in detail.

From points on the Baltimore & Ohio east of Washington Junction complainants are asking that routes be established through Manassas, Strasburg Junction, Staunton, and Charlottesville, and while the distance over this route would be much greater than the distance over the direct route through Potomac Yard in connection with the Southern Railway beyond, complainants are asking for the same basis as is now enjoyed by points on this direct route. Furthermore, they ask for the privilege of shipping wheat through Potomac Yard and Manassas to points on the Harrisonburg branch for milling and reshipment back through Strasburg Junction and Manassas on basis of the joint rates applicable over the direct lines plus 1 cent to cover the off-line charges from Manassas to the milling points and return. The distance from Manassas to Harrisonburg is 109 miles. The Southern Railway does not provide in its tariffs for off-line charges on grain to and from milling points for distances in excess of 100 miles.

Little, if any, evidence was adduced with respect to the desired adjustment on grain moving to Staunton from the east via Charlottesville or Basic and the products thence to destinations in Carolina territory via Basic and Charlottesville. There is nothing in the record that warrants the establishment of the basis sought, viz, the joint rates on grain products from the point of origin of the grain to the destination of the products, plus 1 cent for the off-line movement of the grain from Charlottesville or Basic to Staunton and the products from Staunton to Charlottesville.

Defendants argue with force that no reasons are urged for additional through routes on grain products from the eastern points to destinations in Carolina territory, other than the alleged commercial necessities of complainants to have transit at their milling points.

In this connection it may be noted that no joint rate on any commodity applies from any of the grain originating points involved to destinations in Carolina territory through Strasburg Junction and Staunton. It is fair to assume that in the event joint rates are established over the route through Staunton, the only movement over this route will be the grain and grain products of complainants, because it is clearly established of record that the routes over which joint rates now apply from and to the points in question are more expeditious and economical than the route through Staunton.

It is clear that with respect to the traffic in question the complaining milling points are laboring under a natural disadvantage of location as compared with Lynchburg and other points alleged to be unduly preferred. It is well settled that it is not the province of the Commission to make adjustments which will offset the natural advantages or disadvantages of one locality as compared with another.

Upon all the facts disclosed the Commission should find that the present adjustment on grain from the east milled at the complaining milling points and the products reshipped to destinations in Carolina territory is not unreasonable or otherwise unlawful except that with respect to this traffic Edinburg should be placed on the same basis as other points on the Harrisonburg branch of the Southern Railway southwest of Strasburg Junction.

WOOLLEY, *Commissioner*:

The foregoing proposed report of the examiner was duly served upon the parties to this proceeding, under our rules of procedure permitting the filing of exceptions thereto. No exception has been taken, and the findings of fact therein are adopted as the findings of the Commission.

The rates here under attack have been increased under authority of the federal control act since the complaint was filed, and the relief sought includes an order for the future. This case, therefore, falls within the class of cases as to which we expressed the opinion in our announcement of August 3, 1918, that the Director General of Railroads is a necessary party defendant. Supplemental complaint has not been filed in this case, naming the Director General an additional defendant, as authorized in that announcement. Since no order for the future can be entered upon the pleadings, the complaint will be dismissed.

52 I. C. C.

No. 8834.<sup>1</sup>  
**KETTLE RIVER COMPANY**  
v.  
**MISSOURI PACIFIC RAILWAY COMPANY ET AL.**

*Submitted November 22, 1918. Decided January 21, 1919.*

1. Proportional interstate rates on crossties from points in Missouri to St. Louis, Mo., found unduly prejudicial to the extent that they exceed the rates on crossties contemporaneously maintained and applied from the same points to St. Louis on intrastate shipments.
2. Joint rates on crossties from points in Missouri to Madison, Ill., found unduly prejudicial to the extent that they exceed the rates from the same points to St. Louis by more than 1 cent per 100 pounds.
3. Rates on crossties from points in Missouri and other originating territory to Madison and to St. Louis for beyond found to be just and reasonable maximum rates.
4. Increased rates on crossties to Chicago, Ill., from St. Louis and from East St. Louis, Ill., when the latter are used as components of through rates on interstate shipments, found not justified and to be unduly prejudicial to St. Louis and East St. Louis and unduly preferential of Thebes, Ill., and other lower river crossings.

*Lehmann & Lehmann and Sears Lehmann* for Kettle River Company, complainant; and *W. N. Webb and Jos. T. Davis* for Robert E. Abeles and other complainants.

*M. E. Rhodes, R. O. Bailey, and John T. Hicks* for Lumbermen's Exchange of St. Louis, interveners.

*C. B. Bee* for Public Service Commission of Missouri.

*Henry G. Herbel, Fred G. Wright, Arthur E. Haid, and Daniel Upthegrove* for Missouri Pacific-Iron Mountain system, St. Louis-San Francisco Railway Company, and St. Louis Southwestern Railway Company; *George E. Schnitzer* for Chicago, Rock Island & Pacific Railway Company; *B. H. Dally* for Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; *Frank E. Webster* for Chicago & Eastern Illinois Railroad Company and its receiver; *R. D. Hunter* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; *Fred C. Furry* for Illinois Central Railroad Company; and *J. B. Daniel* for Missouri Southern Railroad Company.

*R. Walton Moore* for Director General of Railroads.

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<sup>1</sup> This report also embraces No. 9797, *Robert Abeles et al. v. Alexandria & Western Railway Company et al.*

52 I. C. C.

## REPORT OF THE COMMISSION.

## DIVISION 2, COMMISSIONERS CLARK, AITCHISON, AND WOOLLEY.

CLARK, *Commissioner*:

The Kettle River Company, complainant in No. 8834, is a corporation that operates a tie and lumber treating plant at Madison, Ill., a point on the Terminal Railroad Association of St. Louis within the switching limits of East St. Louis, Ill. By complaint filed April 25, 1916, it alleged that the then existing rates on crossties to Madison from points in Missouri served by the Missouri Pacific-Iron Mountain system were unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section of the act. Upon hearing it developed that practically the sole issue was that of undue prejudice resulting from the use in constructing joint rates on shipments of crossties consigned to Madison of proportional rates to St. Louis, Mo., which exceeded the Missouri intrastate rates contemporaneously applied from the same originating points on like shipments consigned to competitors at St. Louis and subsequently reshipped to Madison or other interstate destinations. The Lumbermen's Exchange of St. Louis intervened in defense of the Missouri intrastate rates and urged that the discrimination, if found undue, should be removed by reducing the interstate rates.

On July 24, 1917, after No. 8834 had been heard, briefed, and orally argued, the complaint in No. 9797 was filed in behalf of various producers and dealers in crossties at St. Louis. These complainants allege that defendants' interstate rates on crossties from Louisiana, Arkansas, Kansas, Oklahoma, Texas, Missouri, and Mississippi to points in Missouri, Illinois, Tennessee, Arkansas, Louisiana, and Wisconsin are unreasonable and unjustly discriminatory in comparison with the rates applying in the state of Missouri and in certain other territory tributary to the Ohio and the Mississippi rivers. Subsequently the complaint in No. 8834 was dismissed upon motion of the complainant and intervener therein because the complaint in No. 9797 seemingly afforded the basis for a more comprehensive and complete record; but upon defendants' request the case was reopened and it was consolidated with No. 9797. Notwithstanding the broad allegations of this latter complaint the record made thereon, as well as that in the former proceeding, relates almost exclusively to the discrimination resulting from the use of different bases of rates on intrastate and on interstate shipments from Missouri points to and through St. Louis.

After the hearing the complaint in No. 9797 was amended so as to include the Director General of Railroads as a defendant. The Director General waived further hearing and consented that the relevant evidence heretofore submitted be considered in determining the

52 I. C. C.

issues. A report proposed by the examiner, which differs in some respects from this report, was served upon the parties. Certain exceptions thereto were filed and orally argued. Rates are stated in cents per 100 pounds unless otherwise specified.

The following statement, compiled from various exhibits, shows the distances, the former and the present intrastate rates, and the proportional interstate rates, from representative points of origin to St. Louis and also the joint rates from the same points to Madison:

	Distance.	Former intrastate rate.	Present intrastate rate.	Proportional interstate rate.	Joint rate to Madison.
	Miles.	Cents.	Cents.	Cents.	Cents.
Potosi.....	65	2.5	4.6	6.5	7.5
Bismarck.....	75	2.75	4.9	7.0	8
Annapolis.....	108	3.5	5.9	8.5	9.5
Piedmont.....	127	4.0	6.4	9.0	10
Williamsville.....	145	4.5	6.8	9.5	10.5
Poplar Bluff.....	165	5.0	7.2	10	11
Nesleyville.....	181	5.5	7.6	10.5	11.5
Doniphan.....	200	5.75	7.9	10.5	11.5

The former intrastate rates were prescribed in a maximum-rate law passed by the Legislature of Missouri in 1905 and amended in 1907. This law was attacked in judicial proceedings which terminated in the decision of the United States Supreme Court in *The Missouri Rate Cases*, 230 U. S., 474, and except for a short period the rates were not observed by the carriers until after July 12, 1913. Subsequently the Missouri Public Service Commission authorized the carriers to increase their rates. Its power to do so was attacked by the shippers, but was affirmed by the supreme court of Missouri in a decision rendered March 30, 1917. *State ex rel. Rhodes v. Public Service Commission*, 270 Mo., 547. Following this decision the rates shown above as the present intrastate rates became effective on June 1, 1917, and remained in force until increased by authority of the Director General's General Order No. 28. The rates referred to throughout this report as the present rates are those which were in effect prior to the issuance of that order. The local rate from St. Louis to Madison is 1 cent. The joint rates from Missouri points to Madison are uniformly 1 cent higher than the interstate proportional rates to St. Louis and do not, as alleged by complainant, contravene the fourth section of the act. These proportional rates are approximately double the former, and exceed materially the present intrastate rates.

At its Madison plant the complainant Kettle River Company treats ties owned by railroad companies and also ties purchased by it for treatment and resale. In the latter business it competes in the purchase and sale of ties with dealers who maintain yards at St. Louis

in which ties are concentrated and assorted for subsequent disposition. This complainant deals in red-oak ties only, but asserts that the competition with St. Louis dealers and the rate advantages enjoyed by them extend also to untreated white-oak ties which are sold in competition with treated red-oak ties. It is shown that prior to July 12, 1913, when the present interstate rates applied to St. Louis both on state and interstate shipments, the Kettle River Company purchased about 1,100,000 ties annually, principally at Missouri points. Following the establishment of the lower intrastate rates its business diminished until at the time of hearing it amounted to only 100,000 ties annually, and these were procured from its St. Louis competitors. The Kettle River Company avers that if the present rate adjustment is maintained it will be forced to abandon its plant at Madison.

It is conceded by defendants, by the intervener in No. 8834, and by the complainants in No. 9797 that the great disparity between the interstate and the intrastate rates unlawfully discriminates against the Kettle River Company. The representative of the Missouri Public Service Commission expressed the opinion that the state and interstate rates should be the same, that the former state rates were too low, and that the present state rates are reasonable. The controversy is as to the manner in which the undue prejudice and disadvantage should be removed. The Kettle River Company has consistently asserted throughout these proceedings that it is not concerned with the measure of the rates and desires only that the component of the interstate rate from the point of origin to St. Louis applicable on shipments consigned to Madison be the same as the intrastate rate to St. Louis for the same transportation service. The intervener in No. 8834 and complainants in No. 9797 endeavor to show that the interstate rates are unreasonable to the extent that they exceed the intrastate rates, and that if the present interstate rates were applied on their shipments they would be unable to compete with tie dealers at Joppa, Ill., Evansville, Ind., and other Ohio and Mississippi river points. The carriers maintain (1) that the inbound shipments to St. Louis are interstate in character upon which the shippers by an illegal device evade payment of the lawfully applicable interstate rates, and (2) that the interstate rates are just and reasonable.

The St. Louis complainants admit that an important, if not a controlling, purpose in maintaining yards at St. Louis is to secure the advantage of the lower intrastate rates. Otherwise they could and would consign a large proportion of their shipments through to final destinations. Under the present practice the crossties are either unloaded in the yards and inspected and assorted before re-loading, or, after inspection, are transferred direct to other cars.

Substantial benefit in addition to the rate advantages is derived from the concentration of ties at St. Louis, and complainants assert that the practice would be continued even though the intrastate and the interstate rates were equalized. Complainants pay switching charges on intrastate shipments where delivery on connecting lines is required. On interstate shipments switching charges are absorbed by the line-haul carriers. Complainants also bear the expense of unloading and reloading and the burden of investment in and maintenance of the yards. The ties are purchased f. o. b. either the point of origin or St. Louis, and while it is known at the time of shipment that perhaps 75 per cent or more of them ultimately will be reshipped to interstate destinations, the dealers do not know to what particular point the ties will be reshipped or upon what contract they will be applied until after the ties reach St. Louis and have been inspected and accepted by the purchasers. A comparatively small proportion of the ties are disposed of locally or reshipped to intrastate destinations. Although the carriers now contend that the interstate rates are applicable, apparently they have made no effort to collect charges on that basis. Nor does it appear that the manner in which the business is conducted was adopted solely as a device for evading payment of lawfully applicable interstate rates. Some of the yards were established before the intrastate rates were made lower than those applying on interstate shipments. The situation is clearly distinguishable from that presented in *Kanotex Refining Co. v. A., T. & S. F. Ry. Co.*, 34 I. C. C., 271, and cases therein cited. The legality of the practices indulged in by the St. Louis tie dealers is not directly in issue and the foregoing is not to be understood as deciding that question. It is sufficient to say that the obligations of the parties with respect to the observance of the legal rates are clearly and definitely established by numerous decisions of the courts and of this Commission, and that they should be and doubtless are fully understood both by complainants and by defendants.

The evidence as to the reasonableness *per se* of the proportional interstate rates to St. Louis is directed (1) to the question whether rates on ties should be lower than those on lumber, and (2) to comparisons of the Missouri state rates and interstate rates to St. Louis with rates in other localities.

These interstate rates are the same as the rates on lumber and much of the evidence in complainants' behalf is designed to show that, based upon transportation considerations, crossties should be accorded lower rates. The reasonableness of the rates on lumber is not questioned. Complainants' witnesses testified that crossties may be and are transported in cars unsuitable for lumber traffic; that the risk of damage is less; that crossties are available for use in the re-



pair of tracks damaged in wrecks; that they are loaded more heavily than lumber, thereby conserving equipment and yielding greater revenue per car and per car-mile; and that the average value of crossties per carload is less than that of lumber. Complainants contend that the average loading of crossties is about 64,000 pounds per car and that of lumber about 47,000 pounds, but submit no figures showing actual loading. The correctness of these estimates is controverted by defendants, who submit figures covering actual movements, showing that the average loading of crossties is considerably less than that claimed by complainants and not so greatly in excess of that of lumber. Defendants concede that ties may be and frequently are loaded in inferior equipment but assert that they are often loaded in box cars suitable for the transportation of finished lumber or grain and that the shifting about in the car of the ties causes greater damage to the cars than occurs when they are loaded with lumber.

Complainants further show that carriers frequently maintain lower rates on mine ties and timbers, fence posts, etc., than on lumber, lower rates on iron and steel railway track material than on similar articles for ordinary commercial use, and contend that ties should be similarly treated.

On all portions of the Missouri Pacific-Iron Mountain system, except intrastate in the state of Missouri, crossties are rated the same as lumber. This is also true of the St. Louis-San Francisco and the Rock Island systems. The Chicago & Eastern Illinois, the Illinois Central, and some other lines maintain rates on ties between certain points which are lower than those on lumber, but the general practice of defendants is to apply the same rates on crossties as on lumber. We have uniformly held in numerous cases that the rate on crossties should not exceed that on lumber of the same kind or class of wood. In no case have we found that crossties are entitled to a lower rate than lumber. In *Nashville Tie Co. v. L. & N. R. R. Co.*, 40 I. C. C., 377, we discussed the impracticability of applying different rates dependent upon the value or kind of ordinary lumber or ties or of distinguishing between ties and lumber. Although not to the same extent as lumber, crossties differ greatly in value and in other characteristics, being manufactured from different kinds of wood and classified as treated or untreated, hewn or sawn, etc. The general question of the relationship of rates on crossties to those on lumber is before us in *In the Matter of Rates on and Classification of Lumber and Lumber Products*, No. 8131, and our findings herein are without prejudice to the issues in that case.

Defendants filed many exhibits tending to show that their interstate rates to St. Louis compare favorably with the rates in other localities, including certain rates found reasonable by us in the *Nashville Tie Company Case*, *supra*, and in other cases. In the following statement, compiled from exhibits, the rates from representative points in Missouri to St. Louis are contrasted with the distance scales of rates for similar distances effective in adjacent and neighboring states:

	Distance.	Present Missouri intrastate rate.	Missouri interstate rate.	Arkansas rate.	Illinois rate.	Iowa rate.	Kansas rate.	Louisiana rate.	Nebraska rate.	Oklahoma rate.	Minnesota rate.	Kentucky rate.	Tennessee rate.	Mississippi rate.	Texas rate.	Wisconsin rate.
	Mi.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Potosi.....	65	4.6	6.5	7	6.7	5.3	6.5	7	8.5	8	4.5	8	11	6.5	8.75	9
Blancmerck.....	75	4.9	7	7	7.2	5.6	7	7	9.35	8	4.5	8	12	6.75	8.75	10
Annapolis.....	108	5.9	8.5	8	8.5	6.5	9.5	10	11.9	10	5.4	9	15	7.75	11.25	12.5
Piedmont.....	127	6.4	9	9	8.9	7	11	10	12.75	11	5.8	10	15	8	11.25	13.5
Williamsville.....	145	6.8	9.5	10	9.3	7.3	11.5	10	13.6	11	5.8	10	16	8.5	13.75	14.5
Poplar Bluff.....	165	7.2	10	11	9.8	7.7	12.5	12	14.45	12	6.2	10.5	17.5	8.75	16.25	15.5
Neeleyville.....	181	7.6	10.5	12	10.2	8.1	13	12	15.3	13	6.6	10.5	18	9	17.5	16.5
Doniphan.....	200	7.9	10.5	13	10.5	8.4	13.5	12	16.15	13	6.6	10.5	18	9.5	18.75	17

These rates apply on lumber as well as on ties, except in the states of Missouri and Minnesota. In Missouri the rates on lumber are uniformly 1.5 cents higher than those on ties. In Minnesota the rates on lumber for the distances shown range from 1.5 to 2.2 cents higher than on ties. In each of the states named except Missouri, Arkansas, Mississippi, Texas, and perhaps Minnesota the same rates apply on interstate as on intrastate shipments and in most instances are the rates prescribed by the state authorities. The Kentucky and Tennessee rates are the voluntary rates of the Illinois Central, and the Nashville, Chattanooga & St. Louis roads, respectively. It will be noted that the Missouri interstate rates as a whole are as low as or lower than the rates for corresponding distances in the other states named, except Iowa, Minnesota, and Mississippi.

Complainants criticize these comparisons on the grounds that in some of these states no ties are produced and that in others where ties move in considerable volume specific rates apply which are materially lower than those on lumber. Comparisons of specific rates on ties cited by complainants with the Missouri rates for corresponding distances follow:

521 C. C.

From—	To—	Dis- tances.	Specific rates on ties con- verted into rates per 100 pounds.	Missouri rates on ties for equal dis- tances.	
				State.	Inter- state.
		Miles.	Cents.	Cents.	Cents.
East St. Louis, Ill.....	Mount Vernon, Ill..	76	3.31	5.1	7
Do.....	Peoria, Ill.....	157	5.25	7.1	10
Do.....	Danville, Ill.....	184	5.25	7.6	10.5
Do.....	Terre Haute, Ind.....	238	5.25	8.5	11.5
Do.....	Brazil, Ind.....	245	5.25	8.7	11.5
Do.....	Chicago, Ill.....	287	7.25	9.3	12
Thebes, Ill.....	East St. Louis.....	178	5.25	7.5	10.5
Evansville, Ind.....	do.....	187	5.25	7.7	10.5
N. C. & St. L. stations in Tennessee, Johnsonville to Memphis, inclusive.	Metropolis, Ill.....	125	8.5	6.3	9
N. C. & St. L. stations in Tennessee on Centerville branch.	do.....	175	9.5	7.4	10.5
Tennessee Central stations west of Nashville....	Evansville, Ind.....	175	5.6	7.4	10.5

<sup>1</sup> Average.

Defendants assert that the rate comparisons upon which complainants rely are not controlling because the conditions surrounding the traffic are substantially dissimilar. It is shown that some, if not all, of the rates from Tennessee and Kentucky to Ohio River crossings were reduced below the lumber basis because of water competition and other circumstances which do not as forcibly enter into the fixing of rates from Missouri points to St. Louis. Differences in traffic and operating conditions reflected in the lower level of rates which obtains generally east of the Mississippi River are cited as justifying a higher basis of rates between points in Missouri than between points in Illinois or Indiana. A witness for the Chicago & Eastern Illinois, which line appears to be chiefly responsible for the low rates on ties from Ohio and Mississippi river crossings to points in Illinois and Indiana, testified that a large part of the tie traffic of that line now moves on the lumber rates, and that it is the intention to eliminate all special rates on crossties and apply the lumber basis uniformly. For the Missouri Pacific it is asserted that the crossties transported by it originate in sections where operating conditions are more than ordinarily expensive and that it does not participate in the rates from East St. Louis or Evansville, nor meet the rate from Thebes to East St. Louis, although the distance via its line is only 125 miles.

It is not contended by complainants that under the present reshipping practice St. Louis dealers are at a serious disadvantage. Their allegation of undue prejudice relates primarily to the situation which would confront them should they be compelled to pay the present interstate rates, but embraces the nonabsorption by defendants of switching charges on intrastate shipments, and also a present disadvantage resulting from inability to consign direct to final destina-

52 I. C. C.

tion a substantial proportion of their shipments without losing the benefit of the lower intrastate rates.

A large part of the crossties handled by St. Louis dealers and also by dealers at the lower Ohio and Mississippi river crossings are shipped to Chicago and vicinity. The record discloses but little, if any, evidence of competition at other destinations. Two of the defendants, the Chicago & Eastern Illinois and the Illinois Central, serve both the Mississippi River and the Ohio River points. At Joppa, the Chicago & Eastern Illinois and at Metropolis, the Illinois Central, receive many crossties transported by rail or water from Kentucky and Tennessee. While the record is not conclusive upon that point it tends to show that the average transportation and handling costs on ties delivered to dealers at Joppa and Metropolis equal or exceed those of the St. Louis dealers. The rate from Cairo, Joppa, Metropolis, Brookport, Thebes, and Evansville, referred to herein as the lower crossings, to Chicago is 13.7 cents per crosstie. A shipper from both Joppa and Evansville testified that his competition with Missouri dealers is such that he is unable to sell crossties in Chicago while the Missouri product is in the market. A traffic witness for the Chicago & Eastern Illinois testified that similar complaints had been made by other shippers from Ohio River points and that in order to protect them the rates from St. Louis and East St. Louis to Chicago were increased to the extent of 3 cents per crosstie, effective October 1, 1915, the present rate per tie being 13.1 cents from St. Louis and 11.6 cents from East St. Louis. It is apparent that this testimony related to the competitive conditions obtaining prior to June 1, 1917, when the former Missouri intrastate rates were in effect, rather than to the present. The increase in the Missouri intrastate rate from Piedmont to St. Louis, for example, effective June 1, 1917, was 2.4 cents per 100 pounds, equivalent to about 3.6 cents per crosstie. Since that increase no reduction has been made by the carriers in their rates from St. Louis and East St. Louis, which had been raised, as already stated, to remedy the unequal competitive conditions caused by the establishment of the former Missouri rates and the advantage derived therefrom by the Missouri shippers.

The rates from St. Louis and East St. Louis to Chicago having been increased since January 1, 1910, the burden of justifying them is upon defendants. So far as the record shows, such increases and the consequent disruption of the preexisting relationship of rates from the river crossings resulted largely from considerations extraneous to the question of whether the former rates from St. Louis and East St. Louis were inadequate *per se* or improperly related to the rates from the lower crossings. If the increases were justified solely by the desire to offset the reduction in the Missouri intrastate rates,

it seems clear that when the latter were increased the rates from St. Louis and East St. Louis should have been correspondingly reduced.

The rates on lumber reflect in greater degree the difference in distance from St. Louis and from the lower crossings. Prior to May 15, 1918, the rate on lumber from either St. Louis, East St. Louis, or Madison to Chicago was 8.5 cents; from the lower crossings it was 10.5 cents. On that date these rates were increased 1 cent, following the *Fifteen Per Cent Case*, 45 I. C. C., 303. Rates on lumber from St. Louis to Chicago and other Illinois points were found reasonable in *Business Men's League of St. Louis v. A., T. & S. F. Ry Co.*, 44 I. C. C., 308. As already noted, the rates on ties are lower than those on lumber. In view of all the circumstances it does not appear that the rates on ties from St. Louis, or from East St. Louis, are unreasonable. It is clear, however, that these rates when used in connection with the interstate rates to St. Louis to construct through rates on shipments destined to Chicago and vicinity subject St. Louis dealers to undue prejudice and disadvantage and give an undue preference and advantage to their competitors at the lower crossings.

Complainants in No. 9797 contend that the rates on crossties from Missouri points to St. Louis, East St. Louis and Madison should be the same inasmuch as these latter points comprise a single switching district or zone and that basis is observed generally in making rates on lumber and other commodities. It appears from examination of the tariffs, however, that an equality of rates on lumber to St. Louis, East St. Louis and Madison from points west of the Mississippi River is maintained only where the length of the haul is considerable and the rate amounts to 12 cents or more. It is obvious that an equalization of the inbound rates on ties without a corresponding readjustment of the outbound rates would be to the disadvantage of the St. Louis dealers. Where defendants maintain the same rates on ties as on lumber to St. Louis and equal rates on lumber to or from St. Louis, East St. Louis and Madison, no reason is apparent why equal rates on ties should not be applied to and from these and other points in the same switching district.

Upon all the facts of record we conclude and find: (1) That the publishing, demanding, or collecting by defendants of interstate rates on crossties from points in Missouri to St. Louis, when such shipments are consigned to interstate destinations on their lines, which exceed the intrastate rates contemporaneously published, demanded or collected on crossties from the same points in Missouri to St. Louis on intrastate shipments subjects complainant Kettle River Company and other shippers under the interstate rates to undue and unreasonable prejudice and disadvantage and gives to shippers under the Missouri intrastate rates an undue and unreasonable preference and

advantage. (2) That the rates on crossties to Madison from points in Missouri are unduly prejudicial to the extent that they exceed by more than 1 cent per 100 pounds the rates on like shipments from the same points of origin to St. Louis. (3) That the interstate rates on crossties from points in Missouri and other originating territory in question to Madison and to St. Louis for beyond are just and reasonable maximum rates, and that they are not unduly prejudicial, except as hereinbefore found. (4) That the increased rates on crossties to Chicago and Chicago rate points from St. Louis, and from East St. Louis, when the latter are used as components of through rates on interstate shipments, have not been justified; and that said rates are unduly prejudicial to St. Louis and East St. Louis to the extent that the differences between said rates and those from the lower crossings are less than those which existed immediately prior to October 1, 1915.

The record does not cover increases that were made under authority of the Director General's General Order No. 28 after these cases were heard and no finding is made with regard to the reasonableness *per se* of the rates so increased.

Orders will be entered accordingly.

52 I. C. C.

## BUILDING AND ROOFING PAPER AND PAPER BOARD RATES.

No. 9359.<sup>1</sup>

CERTAIN-TEED PRODUCTS CORPORATION

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

*Submitted October 1, 1918. Decided December 9, 1918.*

Carriers in official classification territory sought by fifteenth section application to be permitted to readjust to the sixth-class basis carload rates on building and roofing paper and paper boards of all kinds throughout the territory and between central freight association territory and trunk line territory and New England territory; *Held*, That they failed to justify the adjustment proposed. Basis for reasonable maximum rates prescribed for the future.

*Parker McColester* and *Frederic L. Ballard* for carriers generally in official classification territory; and *W. J. Kelly* for Grand Rapids & Indiana Railway Company.

*Roy F. Britton* and *O. Van Brunt* for Certain-teed Products Corporation; *Arthur B. Hayes* and *Charles Conradis* for Chatfield Manufacturing Company and others; *Harold S. Shertz*, *Pierson & Shertz*, and *Edward C. Taylor* for Frank P. Miller Paper Company, S. Austin Bicking Paper Manufacturing Company, and Kerr Paper Mill Company; *Frank A. Larish* and *James F. Daugherty* for Michigan Paper Mills Traffic Association; *Cassoday*, *Butler*, *Lamb & Foster* for Cornell Wood Products Company; *C. S. Bather* for Rockford Paper Box Board Company; *Charles R. White* for Box Board Manufacturing Association of Chicago, Ill.; *B. F. Fuller* for Ford Manufacturing Company; *G. E. Griffith* for the Beaver Company; *A. B. Cronk* and *Isaac Born* for Lafayette Box Board & Paper Company, *Hinde & Dauch* Paper Company, and *Terre Haute Paper Company*; and *J. L. Roberts* for Barrett Company.

*R. Walton Moore* for Director General of Railroads.

### REPORT OF THE COMMISSION.

*AITCHISON, Commissioner:*

In the above-entitled proceedings a report proposed by the examiner was served upon all parties. Numerous exceptions were taken,

<sup>1</sup> This report also embraces No. 9743, Chatfield Manufacturing Company et al. v. Pennsylvania Railroad Company et al.; No. 9602, Frank P. Miller Paper Company et al. v. Pennsylvania Railroad Company et al.; No. 9602 (Sub-No. 1), S. Austin Bicking Paper Manufacturing Company v. Same; No. 9602 (Sub-No. 2), Kerr Paper Mill Company v. Same; and Fifteenth Section Application No. 870.

which we have heard upon argument; and in the light of the exceptions and argument the record has been examined. This report is based upon the report proposed by the examiner, with such modifications as our examination of the record shows to be proper.

In *Official Classification Rates on Paper*, 38 I. C. C., 120, hereinafter cited as *The Paper Case*, we considered a proposal by carriers in official classification territory to increase rates on printing and wrapping paper, building and roofing paper, and a number of similar articles grouped therewith, to the sixth-class rating in the official classification. It was also proposed to change the rates on paper boards to a uniform 90 per cent of sixth class, and to increase rates on news print paper. The proposed increased rates on printing, wrapping, and blotting paper, cardboard and tag board, paper bags and blank register paper, were found justified. Proposed increased rates on building and roofing paper and paper boards were found not to have been justified. The proposed increased rates on news print paper were found not to have been justified, a slight increase, however, being approved.

Rates on the paper articles here involved, which will be stated throughout this report in cents per 100 pounds and, unless otherwise specified, as of the time of the hearing, were substantially as follows: On building and roofing paper, which general description includes asbestos, composition and prepared roofing, and asphalt shingles, in carloads, eastbound and westbound, between trunk line territory and central freight association territory, the latter hereinafter called C. F. A. territory, rates were scaled on the basis of 21 cents between New York and Chicago, which was approximately 80 per cent of the former sixth-class rate of 26.3 cents. Within C. F. A. territory the general basis of rates on building and roofing paper is 83½ per cent of sixth class. Within trunk line territory no general or uniform basis prevails. Building and roofing paper are rated fifth class in the official classification, but by exceptions to the classification, carriers in that territory generally maintain rates on the sixth-class basis. There are numerous commodity rates between specific points lower than sixth class, and lower in some cases than 80 per cent of that class.

Rates on paper boards, not coated or decorated, eastbound, from C. F. A. territory to trunk line and New England territories were scaled on the basis of 21 cents Chicago to New York, subject to a minimum of 16 cents. Westbound from trunk line and New England territories to C. F. A. territory the general basis on paper boards, not coated or decorated, was 90 per cent of the former sixth-class rate of 26.3 cents, subject to a minimum of 15.8 cents. The general



basis is the same as on building and roofing paper. Locally within New England paper boards take fifth-class rates, and roofing and building paper generally take fifth class, although there are numerous commodity rates on a lower basis. On coated or decorated boards the general basis throughout official classification territory is fifth class.

The lack of uniformity in the rates led to the filing of the formal complaints included in this report and named in the margin. It is not necessary to set out in detail the allegations of each complaint. It is sufficient to state that they raise the question of the reasonableness and prejudicial character of rates on building and roofing paper or paper boards, or both. Each has reference to rates from particular manufacturing points to points in official classification territory. The prayer of each complaint is for a general rate basis related to the class adjustment. For example, the prayer in No. 9359 is that on building and roofing paper rates be prescribed which shall not exceed a fixed and uniform percentage under the sixth-class rates, and to establish on such commodities a relationship to sixth-class rates; in No. 9602, for rates on paper boards that shall not exceed 80 per cent of the sixth-class rates; in Sub-No. 1 to the same docket, for rates on building and roofing paper that shall not exceed 80 per cent of the sixth class; in Sub-No. 2, for rates on paper boards that shall not exceed 80 per cent of sixth class; and in No. 9743, filed in behalf of 18 separate complainants, for rates on building and roofing paper "not exceeding 80 per cent of the effective rates on news print paper, if such rates should be lower than sixth class, and in any event not exceeding 80 per cent of the effective sixth-class rates throughout official classification territory."

The Beaver Company, of Buffalo, N. Y.; H. F. Watson Company, of Erie, Pa.; Michigan Paper Mills Traffic Association; Cornell Wood Products Company, of Cornell, Wis.; Rockford Paper Box Board Company, of Rockford, Ill.; The Barrett Company, of Boston, New York, and Chicago; Straw Board Manufacturers Association and Box Board Manufacturers Association of Chicago, Ill., intervened. In short, all the more important building and roofing paper and paper board manufacturers in official classification territory are parties to this proceeding, either as complainants or interveners.

After the complaints were filed carriers in official classification territory were permitted to increase their class rates 15 per cent. *The Fifteen Per Cent Case*, 45 I. C. C., 303. The increase allowed did not apply to specific commodity rates, but it was held to apply to rates stated at fixed percentages of the class rates. As a result the rates between C. F. A. territory and trunk line territory have not been increased above the 21-cent basis. Within C. F. A. ter-

ritory the general basis of 83½ per cent of sixth class has been increased 15 per cent. Certain specific commodity rates in that territory were not increased at the same time, although in many instances they bore a percentage relation to sixth class. Within trunk line territory there are many specific commodity rates which have not been increased. There is a large movement of building and roofing paper and paper boards in that territory at sixth-class rates. With respect to this traffic an increase of 15 per cent has gone into effect.

On October 1, 1917, carriers in official classification territory filed an application under the provisions of the amended fifteenth section for permission to publish and maintain revised rates on building and roofing paper, composition roofing, asphalt shingles, and paper boards, including wall boards. The description, and the amount of the increases and reductions in percentages, as compared with the existing adjustment, are shown in the appendix. It is also proposed to increase the minimum carload weight of building and roofing paper in C. F. A. territory from 30,000 to 36,000 pounds. No objection was made by any manufacturer to this increase. As it was conceded that the higher minimum was exceeded on practically all shipments, further reference to it will not be made herein.

The building and roofing paper and paper board lists include a variety of articles, such as prepared and composition roofing and box and wall boards. They will be referred to hereafter as building and roofing paper and paper boards, which will include the entire list of articles grouped therewith for rate-making purposes.

In short, it is proposed by defendants to establish and maintain sixth-class rates uniformly throughout official classification territory, except from certain limited territories where departures are necessary to preserve existing relationships, differentials, or groupings, or to meet water competition, referred to hereinafter more in detail.

At the hearing the application under the provisions of the fifteenth section was consolidated with the formal complaints, and, by agreement of the parties, they were heard together. The applicant carriers, hereinafter called defendants, assumed the burden of justifying the proposed increased rates.

It is the expressed desire of all parties that as a result of this proceeding a readjustment of rates on the articles in question may be had that shall put them on a reasonable basis free from admitted inequalities. The real conflict between carriers and shippers hinges on the question whether this purpose should be accomplished by an increase of rates on building and roofing paper and paper boards to sixth class, or by the establishment of commodity rates bearing some

relation to and lower than sixth class. Various members of the pulp-board industry seek the establishment of reasonable commodity rates without regard to the class rates, and oppose any adjustment which will base their commodity rates upon any class rate whatsoever.

Representatives of defendants detailed the history of rates on different kinds of paper within trunk line territory and C. F. A. territory and rates applicable between the two territories. An outline of the history of paper rates is given in *The Paper Case* and need not be repeated here. The purpose of the historical review, as stated by defendants, is to show that rates on paper generally, including those here in question, and news print paper and printing and wrapping papers bear relation one to the other, and that, through pressure from shippers and competition between carriers, rates on building and roofing paper and paper boards have been, and now are, on too low a basis.

Previous to August, 1904, the rates on roofing and building paper and paper boards were generally upon the sixth-class basis throughout official classification territory. In that year there were reductions in the base rate between Chicago and New York, and in 1909 the general adjustment heretofore described was established and has since been maintained. It is shown by exhibits of defendants that of 204 cars of paper boards shipped from different points in trunk line territory to various destinations, 102 moved under sixth-class rates; and that of 160 shipments of building and roofing paper, 45 moved under sixth-class rates. It is insisted, however, by complainants that the bulk of the movement is at rates lower than sixth class.

Defendants compare carload weights on building and roofing paper with the weight of printing and wrapping paper. In *The Paper Case* we found that the average loading of printing paper was from 40,000 to 47,000 pounds per car, and that the average loading of wrapping paper was slightly less than 50,000 pounds. The average weight of 4,589 carloads of building and roofing paper shown in exhibits in this case is 38,696 pounds; and the average weight of 1,859 carloads of paper boards is 46,047 pounds. It is contended that the lighter loading of building and roofing paper than of the general paper list warrants higher rates.

It is contended by defendants that the present values of building and roofing paper and paper boards approximate the average values of printing and wrapping paper at the time *The Paper Case* was decided. In that case it was found that the value of printing paper ranged from \$72 to \$150 per ton; and of wrapping paper, from \$25 to \$145 per ton. It is difficult from the figures presented in this record to determine the value of the different kinds of paper with

52 I. C. C.

any degree of accuracy. Prices vary as between the different mills, and between different grades and kinds of paper. Defendants submitted values furnished their agents by manufacturers during April, 1917. Manufacturers submitted figures disclosing like information as to the price at or about the time of the hearing. It is shown by complainants and interveners that at the time the defendants secured their prices they were much higher than before and after that date. In other words, it is shown that the highest prices ever known were at that time received by manufacturers. It is not necessary to analyze the figures in detail. It will suffice to state that prices presented by defendants on roofing paper range from \$60 to \$100 per ton; building paper from \$50 to \$90; and prepared roofing and "rubber roofing" from \$40 to \$134. The prices given by manufacturers for roofing and building paper range from \$40 to \$80 per ton. The values of paper boards of all kinds, according to defendants, range from \$40 to \$140 per ton; and according to manufacturers, from \$35 to \$100 per ton with the average about \$50 per ton. Wrapping paper now ranges in value from \$45 to \$105 per ton, with the average from \$60 to \$70. The value of printing paper is now from \$80 to \$240 per ton. It will be noted that the relative values of the different kinds of paper are not materially different from those found in *The Paper Case*, but since our decision in that case all kinds of paper have increased in value proportionately.

It is the contention of defendants that the differences in value between building and roofing paper and paper boards, and wrapping and printing paper are not sufficient to justify differences in rates. There are many articles where the range of values is the same or greater than that of the different kinds of paper, to which the same freight rate is applicable. The brick list has a range in value from \$3 to \$150 per ton; machinery, with an exceedingly wide range of values; iron or steel articles; and soap, the values of which range from 4½ to 90 cents a pound, take the same freight rates, notwithstanding values of the different articles included in lists.

The methods of the manufacture of different kinds and grades of paper are described in *The Paper Case* and need not be repeated here. In that case, at page 124, it was said:

The same general method is used in the manufacture of all kinds of paper, the difference in grades being effected by substituting one ingredient for another or by changing the proportion of the ingredients.

This record shows substantially the same thing. Some boards are made entirely of straw and some entirely of wood pulp, but it is insisted by all parties that boards of all kinds should take the same rate bases.

Building and roofing paper and paper boards are largely made from waste paper, rags, wood pulp, or a combination of them. The defendants assert that certain kinds of wrapping paper are used as building paper, or are used as a part of the raw material from which the finished product is produced. They further insist that there is commercial competition between paper boards and wrapping paper and that there is no sufficient reason to warrant a different basis of rates.

The defendants filed exhibits showing their earnings per ton-mile and per car-mile under former, existing, and proposed rates. The exhibits were not filed to show the volume of the movement or the total revenue for any period. Certain important originating lines selected a number of points on their lines and furnished data as to one week's shipments to points in official classification territory. The information furnished was consolidated into separate exhibits showing average earnings for hauls of different lengths. It is asserted by defendants that the exhibits are representative of actual earnings of the carriers on the traffic under the rates in effect when the shipments moved. They also indicate the effect of *The Fifteen Per Cent Case* and of the *C. F. A. Class Scale Case*, 45 I. C. C., 254. In the exhibits shipments were divided into five groups with reference to the length of the hauls as follows: Under 50 miles; 50 to 150 miles; 150 to 250 miles; 250 to 400 miles; and over 400 miles. The following table is compiled from exhibits showing per car-mile earnings in cents, under rates in effect at the time shipments moved; earnings that would have been yielded had sixth-class rates been in effect at the time; the earnings under the rates now in effect; and the earnings under the proposed rates:

## TRUNK LINE TERRITORY.

## PAPER BOARDS.

Shipments.	Average distance.	Yield at date of shipment.	Yield at sixth class at date of shipment.	Yield at present time.	Yield under proposed rates.
<i>Number.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
39	20	120.7	140	127.4	216
52	120	43.4	42.1	47.3	48.6
23	179	29.8	33.5	32.2	36.8
14	336	21.7	23.4	22.5	26.6
78	591	13.6	15.2	14	16.6

## ROOFING AND BUILDING PAPER.

<i>Number.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
15	24	124	132	138	154
13	108	34.8	36.9	38.2	42.8
31	202	27	30.9	28.1	35.2
42	327	15.2	18.5	15.8	21.4
50	641	9.3	11.3	9.5	12.8

## CENTRAL FREIGHT ASSOCIATION TERRITORY

## PAPER BOARDS.

Shipments.	Average distance.	Yield at date of shipment.	Yield at sixth class at date of shipment.	Yield at present time.	Yield under proposed rates.
<i>Number.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
25	42	58.2	70.2	69.4	84.5
20	104	35	41.3	39.9	48.3
33	136	19.5	23.1	22.9	26.7
31	322	15.3	18.6	17.7	22.1
63	708	12	14.4	12.7	16.1

## ROOFING AND BUILDING PAPER.

<i>Number.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
1	47	38.5	42.5	48	57.4
6	84	33	39.5	39.3	47.1
10	189	17.5	21.2	20.9	24.6
29	338	12.9	15.5	14.9	17.6
40	650	10.4	13.4	11.9	14.7

Defendants compare car-mile earnings on various articles with those on building and roofing paper and paper boards to show that the yield from the latter is comparatively low. Among the articles referred to are iron and steel, galvanized roofing, roofing tile, which moves at fifth-class rates, and stone, which moves at fifth-class and sixth-class rates.

As before stated, the base rate on the papers in question between Chicago and New York is 21 cents. Under the average loading shown by exhibits on file, taking the distance between the two points as 920 miles, the per car-mile earnings on building and roofing paper would be 8.8 cents, and on paper boards, 10.5 cents. It is vigorously insisted by defendants that complainants and interveners have not called attention to any article, regardless of value, loading as light as building and roofing paper and paper boards which has a basic rate between New York and Chicago so low as 21 cents, and they express doubt whether any such instance can be found. Complainants refer to news print paper which, it is asserted, loads lighter, and is of slightly higher value.

On brief the defendants argue that in *The Paper Case* we approved sixth class as a reasonable basis of rates throughout official classification territory on the general paper list; and that no sufficient difference exists between building and roofing paper and paper boards and the general list of printing and wrapping papers to warrant the continuance of rates on the former lower than on the latter. It is insisted that our failure to approve the sixth-class basis on building and roofing paper, and 90 per cent of sixth class on paper boards in *The Paper Case* was not an affirmative finding that the existing rates were reasonable; and that building paper and

roofing paper and paper boards are largely similar to printing and wrapping paper as to raw material and physical characteristics.

It was contended at the hearing by defendants that their financial condition at the time precluded reductions in existing rates, and tended to justify increases of rates now less than sixth class. Statistical exhibits were filed showing certain features of the financial condition of the Pennsylvania Railroad system. The witness who presented the figures stated that substantially the same showing was to be derived from the financial condition of the Baltimore & Ohio and New York Central systems. The showing was the same as that submitted in the reopened *Fifteen Per Cent Case*, *supra*. It is insisted that in spite of continued increases in gross operating revenue, the net operating income showed substantial and continued decreases. This was asserted to be due largely to increases in the cost of fuel, material, and labor. Efforts to increase economy of operation, resulting in an increase in average car loading, on the Pennsylvania system, from 26½ tons in 1916 to 28½ tons in 1917 and in train loading from 676½ tons in 1916 to 732 tons in 1917, have been unavailing, it was asserted, to offset the increase in transportation expenses. The contention is that there is no justification in the face of the financial figures for requiring defendants to reduce any of their rates, or to continue rates on building and roofing paper and paper boards on a basis lower than that approved by us for the general list of printing and wrapping papers.

It is shown, as before stated, that the proposal of defendants contains exceptions to the general sixth-class basis. Under their proposed rates, those from the Tyrone-Piedmont group of paper mills will be the Williamsport-Cumberland sixth-class rate. These are the class rates applying from all points in the group except a few points in Virginia, viz, Covington, Buena Vista, and Big Island, which as to class rates are on the slightly higher Lynchburg, Va., basis. This proposal is in accord with the adjustment on printing and wrapping paper approved in *The Paper Case*. In that case the adjustment of rates between these groups is fully discussed beginning at page 133, and need not be repeated here.

For many years rates on all kinds of paper in northern New York to Boston, New York City, Philadelphia, and Baltimore have been made on fixed arbitraries over the rates from Buffalo. Under the proposed adjustment the rates from Buffalo and the Niagara frontier are fixed on the sixth-class basis, the northern New York arbitrary to be added to the sixth-class rates from Buffalo. The arbitraries range from 1 to 2 cents. The distances from northern New York points to New York City are less than from Buffalo, but class rates therefrom are on a higher level than from Buffalo. This proposal has not been directly attacked by any producer of paper articles.

Where specific commodity rates are published by ocean carriers between Atlantic ports and adjacent territory, the defendants propose to meet this competition.

The proposal is also to meet sixth-class rates via competing routes. They are proposed where no through class rates exist via a particular route. In a few instances of this kind rates will be specifically published on building and roofing paper and paper boards at the same figure as the sixth-class rates via competing routes. There was no objection to this proposal at the hearing, and such rates are maintained under the class adjustment.

To a large extent building and roofing paper and paper boards move locally in New England at fifth-class rates. There are commodity rates, however, on a lower basis. New England carriers do not propose a reduction in rates that are now higher than sixth class. Rates now lower than sixth class within New England will be increased to that basis. There is no material evidence in this record with respect to the New England local situation and it does not affect the adjustment of through rates. Complaint is made of the adjustment of rates as between points in C. F. A. territory to points east of Brunswick, Me., as compared with rates from trunk line territory to the same points. Joint rates are in effect from C. F. A. points, while through rates from trunk line points are made up of rates to Maine junctions plus the fifth-class arbitrary beyond. The New England carriers ask that should we find such an adjustment discriminatory, its removal should be permitted by adding to rates from C. F. A. territory the same arbitraries over the basing points as apply from trunk line territory. The suggested arbitraries are the same as apply on all kinds of paper and the proposed adjustment would be generally satisfactory to complainants.

Complainants and protestants, with one exception, contend that there is but one issue in this proceeding with respect to building and roofing paper, and that is the relationship of the rates. It is agreed by all parties that the present adjustment throughout official classification territory is full of inequalities and discriminations. The one exception is the complainant in No. 9359, the largest producer of building and roofing paper and prepared roofing in the country, with manufacturing plants at York, Pa., Niagara Falls, N. Y., Marseilles, Ill., East St. Louis, Ill., and Richmond, Cal. On brief it is stated that this complainant is willing to test the application of any uniform adjustment, whether it be full sixth class or a percentage thereof. There are numerous exhibits, and much evidence in the record respecting alleged discriminations in the present adjustment. These need not be discussed in detail. Some of them exist because of increases in class rates with no corre-



sponding increase in commodity rates, and many exist because of lower bases of rates from certain territories: They serve to emphasize the need of an adjustment in the entire structure upon some reasonable and uniform basis.

The manufacturers of paper boards, as a rule, insist that their product is entitled to lower rates than any other paper product. Their contention is that paper boards should be accorded commodity rates without regard to class rates that might be made applicable to the general paper list. Some of them are of opinion that 83½ per cent of the sixth-class rates in effect previous to the increase that became effective August 1, 1917, applicable to shipments within C. F. A. territory, and 80 per cent of such class rates on traffic to trunk line territory would be reasonable. Others contend that commodity rates based or calculated primarily on the sixth-class structure, but without a fixed relation thereto, will result in an adjustment of rates, which while not entirely free from inequalities, would be generally just and reasonable.

There is, however, such similarity and relationship between paper boards and the other kinds of paper embraced in this proceeding, and between paper boards and many articles which customarily carry class rates, that in order to avoid unjust discrimination and undue prejudice as between commodities and localities, there should be maintained a uniform and constant relation in the transportation rates upon paper boards as compared with the other paper articles embraced herein and the class rates applicable in the same general territory. It is not alone sufficient that manufacturers of paper board should be given just and reasonable rates; but the rates charged them should be reasonable, considered in relation to other charges of the carriers. *Portland Railway Light & Power Co. v. Railroad Commission of Oregon*, 229 U. S., 397. This equality of relation can best be accomplished and maintained by adjusting the commodity rates on paper boards with relation to the sixth class.

It is contended by the complainants and interveners that the issue here presented was before us and disposed of in *The Paper Case*. As before stated, in that case carriers in official classification territory sought to increase rates on building and roofing paper to the sixth class, and paper boards to 90 per cent of sixth class. It is now asserted by the parties complainant in this proceeding that our finding in that case that the respondents had failed to justify the proposed increased rates was an adjudication of the questions presented in this case. Paper-board manufacturers also refer to *Wall Board Rating*, 43 I. C. C., 189, wherein a proposal to increase rates on wall board from 83½ per cent of sixth class to sixth class was denied. It can not properly be held that in the decisions referred to there

was a finding that the then existing rates on building and roofing paper and paper boards were reasonable. The complainants and interveners here do not think so. They have filed formal complaints, and have appeared in the present proceeding for the express purpose of testing the reasonableness of the rate adjustment that was left in effect after the decisions in those cases. The proceeding in *The Paper Case* became necessary because paper manufacturers and carriers after repeated efforts had failed to agree upon a satisfactory adjustment of rates. We found the respondents had failed to justify the proposed increased rates on building and roofing paper and paper boards, and commented on the fact that the carriers had submitted but little evidence with respect to those articles. In any event, it is an admitted fact in this proceeding that the present adjustment of rates on building and roofing paper and paper boards of all kinds is not satisfactory to shippers or carriers, and that the desire of all is to have prescribed a basis of rates that shall result in a nearer approach to harmony between conflicting interests. The question can be determined more satisfactorily on the present record than was found possible on the inadequate evidence submitted in *The Paper Case*.

It is estimated by manufacturers of building and roofing paper that during the year 1916 carriers in official classification territory transported 1,500,000 tons of finished product, or a total of 75,000 cars of 20 tons per car. There is a still greater movement of paper boards, including box board and wall boards, of all kinds. In the manufacture of the paper there is a large tonnage of raw material and coal moving to plants. It is insisted by complainants that the value of the product, the volume of the business, its steady movement, the heavy car loading, freedom from loss and damage claims, prompt handling, and the use of inbound cars for outbound shipments, stamp building and roofing paper and paper boards as very desirable traffic, with which are connected substantially all the elements that go to make comparatively low freight rates proper.

Building and roofing paper and paper boards are produced at numerous points in trunk line and C. F. A. territories and competition between producers is exceedingly active and keen. Strawboard is produced wholly within C. F. A. territory, where a supply of raw material may be secured. Box board manufacturers find it advantageous to locate near cities where there is large consumption of the finished product as well as a supply of raw material, such as waste paper and rags. It is insisted by some complainants and interveners that the increased rates proposed by the defendants would operate to unduly favor plants located near large consuming centers and render it unprofitable to operate plants in the country.

Numerous and elaborate exhibits were filed by various representatives of manufacturers to show the amount of increases in rates, and the percentages the increases are of those in effect previous to our decisions in *The Fifteen Per Cent Case*, *supra*, and *C. F. A. Class Scale Case*, *supra*. It is sufficient to state that they show that the percentages of increases range from 15 per cent to 70 per cent, with the average from 25 to 30 per cent. It is earnestly contended by manufacturers that the proposed increased rates are more than the traffic can bear. Some of the shippers contend that they have already had an increase of 15 per cent in practically all their rates in C. F. A. territory in addition to increases under the *C. F. A. Class Scale Case*, and that a still further increase of 16½ per cent would be ruinous to their business.

A large number of exhibits were filed by complainants and interveners to show rates and earnings on building and roofing paper and paper boards from many points of production to destinations in official classification territory. The exhibits in general show earnings per ton-mile and per car-mile under present rates, under those proposed by defendants, and under 80 per cent of the sixth-class rates in effect previous to August 1, 1917. It would serve no good purpose to reproduce those exhibits here. It will be sufficient to give the averages of a few as illustrative. From the exhibits the following statement has been compiled to show average returns on the different articles named from designated points of origin:

## BUILDING AND ROOFING PAPER AND PREPARED ROOFING.

To points in official classification territory from—	Cars.	Average weight per car.	Average distance.	Yield per car-mile under proposed rates.	Yield per ton-mile under proposed rates.	Yield per car-mile under 80 per cent of sixth class.	Yield per ton-mile under 80 per cent of sixth class.
	<i>Number.</i>	<i>Pounds.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Philadelphia.....	657	38,815	277	23.7	1.27	16.7	0.90
Boston.....	326	37,746	69	42	3.30	25.5	1.40
Chicago.....	348	36,502	253	21.6	1.13	13.7	.71
Erie, Pa.....	955	38,600	312	18.8	.97	13.6	.67

## PAPER BOARDS.

From—	Cars.	Average weight per car.	Average distance.	Yield per ton-mile at present rates.	Yield per car-mile at present rates.	Yield per ton-mile under proposed rates.	Yield per car-mile under proposed rates.
	<i>Number.</i>	<i>Pounds.</i>	<i>Miles.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Otsego and Three Rivers, Mich., to points in trunk line territory.....	8	50,000	764	4.8	13.38	7.06	19.45
Kalamazoo, Otsego, and White Pigeon, Mich., to points in C. F. A. territory...	50	52,768	193	21.7	53.49	26.13	64.12

52 I. C. C.

Complainants argue that an important consideration in a determination of the reasonableness of a rate is whether the articles are of a high, low, or an average grade. If it is an average article of commerce it may properly be compared with the average of all traffic. It is insisted that printing and book paper are average articles of freight, considering value, volume of movement, etc. Paper boards and building and roofing paper generally load heavier than other kinds of paper, there is a larger movement of them, and they are of low value. These considerations underlie the contention that the earnings per ton-mile should be less than on all traffic. It is shown that the average haul on all traffic of the New York Central, for example, is 209 miles, with an average ton-mile earning of 6.07 mills. On paper boards the average ton-mile yield on 59 shipments from Michigan, shown in the exhibit of record, for an average haul of 193 miles, is 16.7 mills. Corresponding comparisons are made as to car-mile earnings on both building and roofing paper and paper boards. It is argued by defendants that comparisons of average earnings per ton-mile and per car-mile of all traffic are without weight in judging the reasonableness of the proposed rates. Figures showing the average earnings of a carrier include all traffic, whether through or local, light or heavy, carload or less than carload. It is also argued that comparisons both as to earnings and length of haul on all traffic are totally dissimilar from shipments from and to particular points. As to the length of the haul, the various figures in the record on shipments of building and roofing papers and boards from certain mills, or over particular lines, show an average made up of a number of total and complete movements from origin to destination, whether performed by one carrier or jointly by two or more carriers. Figures shown in reports of various carriers, indicating the average hauls, are not averages of total or complete movements. Such figures in the reports indicate the average length of the haul of the particular carrier participating in the movement of all shipments passing over its rails, whether locally or through. Average earnings computed from divisions of rates and parts of through hauls, it is insisted by defendants, are not fairly comparable with the earnings from a rate for a particular haul between specific points.

It is shown by representatives of building and roofing paper manufacturers that in western trunk line territory and in southern classification territory rates on their paper products are lower than the classification basis. In western trunk line territory the paper list takes fifth-class rates. Building and roofing papers take commodity rates ranging from 50 to 77 per cent of the class rates. In southern classification territory papers generally are rated class A. Com-

modity rates on building and roofing papers range from 60 to 88 per cent of the class rates and lower than on printing papers. Comparisons are made showing rates on pulpboard between certain points in western trunk line territory and proposed rates in C. F. A. territory. It appears that for the same or similar distances the proposed rates would be somewhat higher than those now in effect between the points referred to.

As before stated, paper board manufacturers contend that their products should be given commodity rates without regard to the class-rate adjustment. It is argued in their behalf that the proper way to accomplish a fair, reasonable, and nondiscriminatory adjustment of rates on all kinds of paper boards in official classification territory is by the establishment of commodity rates; that a commodity rate is susceptible of much more delicate adjustment than a class rate; and that the inelastic class-rate structure can not be made to meet the just requirements of this highly competitive industry. The record shows that boards of all kinds move in large volume, furnishing to carriers a steady movement. The production of paper boards is an industry of comparatively recent development, but at this time there are manufacturers located throughout official classification territory and each does a substantial business. Each consuming market may be served by several manufacturers and competition for business is intense. The product is sold on a low margin of profit, and the value is so low that the amount of the freight charges becomes a substantial part of the cost to the consumer. The class rates, or any fixed percentage thereof, it is insisted, would fail to provide the adjustment of rates necessary to the further development of the business.

It is further insisted by the paper board interests, and by certain of the building and roofing paper manufacturers, that their rates should be no higher than those on news print paper. It is asserted that news print paper and paper boards are articles of substantially the same character, the only real difference being that paper boards are of greater thickness, and that news print paper is of slightly greater value per ton. The transportation characteristics differ in some respects. Paper boards load more heavily than news print paper, and on the same rate would produce greater earnings per car. The volume of the traffic in boards is said to be greater than news print, although there are no figures in the record as to the volume of the shipments of the latter.

It is also insisted that the proposed increase of rates on wood-pulp wall board, which competes in consuming markets with plaster board and wall plaster, would operate unduly to prejudice the former. Rates on wall board, wall plaster, and plaster have long

been maintained on the same basis. No proposal has been made to us by the carriers to increase rates on plaster board and wall plaster. Paper boards or box boards are used to make containers, such as paper boxes, pails, tubs, etc. Other boards are made for covering window frames, picture frames, mirror frames, drawer bottoms, and for numerous other purposes.

It is asserted that the paper board industry is now in a depressed condition and in no position to bear any increase in transportation charges which are not shared in like proportion by all other competitive traffic. The decline in the demand for paper boards is due to several causes, among which is the purchase of food stuffs, clothing, boots, and shoes by the government in bulk, which eliminates to a large extent the small package. It is asserted that the cost of production of paper boards has increased to such an extent that box shooks are becoming relatively cheaper, and the wooden box is rapidly coming into use.

It is admitted by representatives of the carriers that there is no reason for making a distinction of rates between wood-pulp board used for walls and wood-pulp board used for other purposes. *Wall Board Rating*, 43 I. C. C., 189, 192.

With certain important exceptions news print paper now moves throughout official classification territory under sixth-class rates. The movement between trunk line and C. F. A. territory is under sixth-class rates with the following exceptions: From northern New York, New England, and eastern Canada the rate to Chicago is 20 cents with rates to central freight association points on the usual percentages thereof. The 20-cent rate resulted from the following circumstances: The Grand Trunk in 1900 established an 18-cent rate on news print paper from Berlin, N. H., to Chicago over its differential line. A proposal to increase the rate to 21 cents was considered in *The Paper Case*. The rate could not be increased to a higher figure by other carriers because the Grand Trunk and Canadian Pacific refused to agree to a higher basis. At the hearing in that case the Canadian lines failed to appear to offer any justification for the proposed increase to 21 cents and we fixed 20 cents as the westbound rate. The proposed eastbound increase from 21 cents to sixth class, from Cheboygan, Mich., and Alexandria, Ind., was condemned because no justification was offered, and because of the lower basis westbound. Under this adjustment most of the news print paper originating in official classification territory moves between trunk line and C. F. A. territory at less than sixth class. It is only the interterritorial movement from the points referred to that is affected by the low rates. The fact that rates on news print paper interterritorially are about 80 per cent of the former sixth-class

base rate from New York to Chicago is not convincing that such rates should be found reasonable for shipments of building and roofing paper and paper boards throughout the entire territory. The rate on news print paper is low in comparison with other rates. *The New England Investigation*, 27 I. C. C., 561, 565. It was made and is maintained under circumstances that do not obtain with respect to the papers here in question.

It is the contention of complainants that reasonable rates on the papers in question should be prescribed with relation to the sixth-class rates in effect previous to August 1, 1917; that those now in effect are commodity rates; and that the finding of the Commission in *The Fifteen Per Cent Case* was that there should be no increases in commodity rates. In answer it may be stated that *The Fifteen Per Cent Case* was reopened and as a result thereof, increases were permitted upon numerous commodities, and, generally, the increases were by the same percentage as we had already authorized as to class rates; that building and roofing paper and paper boards are now carried at sixth-class rates from important producing points in trunk line territory; and that a large part of the traffic moves at rates which bear a fixed relation to the sixth-class rates.

The mere fact that rates on building and roofing paper and paper boards yield more revenue than the average on all traffic of defendants is not conclusive that they are higher than reasonable. In *Coke Producers' Asso. of Connellsville v. B. & O. R. R. Co.*, 27 I. C. C., 125, 132, we said:

Comparisons of rates, revenue per ton-mile, per car-mile, per train-mile, etc., are frequently illuminating and helpful. The fact that the rates upon a certain commodity yield revenue per ton-mile higher than the average upon all traffic can not be accepted as conclusive of the unreasonableness of such rates. If it were so accepted, the result would be a continual reduction of rates that yield higher than the average revenue until all rates were on a common level.

Building and roofing paper and paper boards do not compete in any marked degree with papers included in the general paper list which now take sixth-class rates as the result of the finding in *The Paper Case*. They are readily distinguishable from other papers and are in a class by themselves. For many years they have been transported at rates lower than on higher grades of paper, or papers included in the general list. This is not only true of official classification territory, but is also true, as a general rule, in all parts of the country. This well-nigh universal rule is doubtless founded on sound reasons. The low grade of the traffic, its great volume, and reasonably heavy loading, make it very desirable freight for carriers to handle. On this record there appears no good reason why paper boards of all kinds should be segregated from building and roofing

52 I. C. C.

paper and accorded a lower basis of rates. The two kinds of paper have, in the past, generally speaking, taken substantially the same rates when moving between the same points. There are exceptions as to commodity rates on paper boards from and to certain points. For example, rates are on a low basis from points in Indiana to Chicago. It is not necessary here to consider them in detail.

The need for a readjustment of rates on building and roofing paper and paper boards throughout official classification territory is apparent. The present rate structure is indefensible. Producing plants are scattered generally throughout the country and competition for business is incessant and keen. A few cents difference in freight charges may determine a sale. Under such circumstances uniformity of rates is as of vital importance as the amount of them. Throughout the proceeding the discriminations in the present adjustment were emphasized by complainants and conceded by defendants. It is true there was considerable evidence introduced with respect to the reasonableness *per se* of the rates involved, but with practical unanimity manufacturers agree that rates with some ascertained relation to sixth class will produce an adjustment which, as a whole, will substantially meet their requirements as to relationships between producing plants and consuming territories. On brief it is stated in behalf of numerous complainants that—

It is not claimed that a commodity rate structure based initially on the class-rate structure will do away with all discriminations in the entire territory; but the class-rate structure has stood for many years and probably represents the best adjustment that could be adopted at present in a general proceeding to establish a uniform rate structure. Particular circumstances may exist showing that the application of a percentage of the sixth-class rate may not be an equitable rate to apply on building and roofing papers from a particular point to certain points of destination; but an equitable and reasonable basis having been established, any discriminations which may thereafter be found to exist can be separately considered.

The territory here involved covers the most important producing and consuming sections of the country; the adjustment is an important one alike to carriers and shippers; and in considering such a matter many transportation elements are brought into play which are not considered with respect to a rate from a particular point to a particular point. Long and short hauls are involved, as well as established and long-continued relationships between territories and localities. The burden of proof is on the defendants to show that the adjustment they propose is just and reasonable. The proposal has the merit of uniformity, but it is conceded by defendants that some fixed percentage relationship to the sixth-class adjustment, but lower than the class rates throughout the territory, would accomplish the same result.



The description of the articles included in this proceeding was submitted with the carriers' application under the amended fifteenth section, and no objection to it was made by anyone.

On December 26, 1917, the President issued a proclamation under which control generally of transportation systems of the country was assumed by the federal government on December 28. He appointed a Director General of Railroads to operate the railroads to effectuate the purpose for which control was assumed. The facts with respect to federal control of the carriers of the country are stated in *Willamette Valley Lumbermen's Asso. v. S. P. Co.*, 51 I. C. C., 250, and need not be repeated. Suffice it to say that complainants in Nos. 9359 and 9743 have filed supplemental complaints making the Director General of Railroads a party defendant. No such amendment has been filed in the other cases consolidated with this proceeding.

The only effect of this is that technically we may not have power to issue an order for the future in the cases in which amendment has not been made. This is not important for the reason that all the leading carriers operating in official classification territory are defendants in the complaints as amended and the Director General operates all the leading carriers in that territory.

On June 25, 1918, on order of the Director General, rates on all kinds of paper were increased 25 per cent. The effect of the increased rates is that in some instances the prejudices complained of have been increased. These cases were submitted before the increased rates became effective. In his answers to the supplemental complaints the Director General states that:

He does not demand further hearing of evidence in this case, and consents that, in so far as it is relevant, the evidence heretofore submitted may be considered by the Commission in determining the questions now at issue.

No request for taking additional evidence was made by complainants. Nothing that has resulted from the control of the defendants by the federal government is warrant for a continuance of an unduly preferential adjustment of rates such as this record discloses.

#### CONCLUSIONS.

We therefore find:

1. That defendants have failed to show that the application of sixth-class rates on building and roofing paper and paper boards, in carloads, throughout official classification territory would be just and reasonable.
2. That the evidence shows that reasonable maximum rates on building and roofing paper and paper boards between points within C. F. A. territory and within trunk line territory and between the two territories and between either of them and points in New

52 I. C. C.

England territory should not exceed 90 per cent of the sixth-class rates contemporaneously in effect.

3. That maintenance of different arbitraries over Maine junctions to points in New England territory from trunk line territory than from C. F. A. territory is unduly prejudicial and preferential and should be adjusted by defendants so that the same arbitraries should be added to make through rates on shipments from points in both territories. We assume that the defendants will promptly make this adjustment.

4. That from northern New York rates may be made by adding existing arbitraries to the Buffalo, N. Y., rates herein found reasonable.

5. That where specific commodity rates are published by water lines between Atlantic ports and adjacent territories the defendants may make rates with reference to water competition.

6. That rates from the Tyrone-Piedmont group of paper mills should be on the Williamsport-Cumberland basis. *The Paper Case*, pages 134 to 138.

7. That the description of the articles involved as submitted by the carriers for publication in their tariffs has been justified.

An appropriate order will be issued.

52 I. C. C.

## APPENDIX.

## DESCRIPTION.

Binders board, box board, chip board, paper stock board, strawboard, wood-pulp board, in straight or mixed carloads.

Board, ceiling or wall, carloads, made of fiber board or pulpboard.

Paper, building and roofing; paper, building and roofing, asbestos, in straight or mixed carloads.

Roofing, composition, carloads.

Roofing, carloads, paper or prepared, in rolls, with which are shipped liquid cement, roof coating, pitch, coal tar, tin-roofing caps and nails, in mixed carloads.

Shingles, asphalt, carloads, all kinds, in bundles, boxes, or crates.

## BUILDING AND ROOFING PAPER.

	Present basis.	Proposed basis.
Central freight association territory to trunk line territory.	80 per cent of sixth class <sup>1</sup> .....	Sixth class.
Trunk line territory to central freight association territory.	80 per cent of sixth class, scaled to 67 per cent with minimum of 13.7 to 80 per cent points or equivalent to approximately 87 per cent of sixth class. <sup>1</sup>	Do.
Central freight association intraterritorially.	83½ per cent of sixth class.....	Do.
Trunk line intraterritorially.....	Generally sixth class with numerous commodity rates lower than sixth class.	Do.

## BOARDS (NOT COATED OR DECORATED).

Central freight association territory to trunk line territory.	80 per cent of sixth class scaled to 76 per cent which is observed as minimum from points lower than 76 per cent. <sup>1</sup>	Sixth class.
Trunk line territory to central freight association territory.	90 per cent of sixth class scaled to 76 per cent which is observed as minima to 70, 71, and 74 per cent with sixth-class rates as minima to points lower than 70 per cent. <sup>1</sup>	Do.
Central freight association intraterritorially.	83½ per cent of sixth class.....	Do.
Trunk line intraterritorially.....	Generally sixth class with some commodity rates lower than sixth class.	Do.

## BOARDS (COATED OR DECORATED).

Official classification territory.....	Fifth class.....	Sixth class.
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<sup>1</sup> Represent percentage of sixth class prior to 15 per cent advance.

No. 8845.<sup>1</sup>

NATCHEZ CHAMBER OF COMMERCE

*v.*

LOUISIANA & ARKANSAS RAILWAY COMPANY ET AL.

*Submitted October 1, 1918. Decided January 16, 1919.*

1. Natchez found to be subjected to undue prejudice with respect to intrastate rates between western Louisiana points and interstate rates between western Louisiana points and southern Arkansas points.
2. Failure of carriers to accord Natchez joint rates and specific through rates to and from western Louisiana and southern Arkansas points in such manner and to the same extent as (1) between western Louisiana points and (2) between western Louisiana and southern Arkansas points found to subject Natchez to undue prejudice.
3. Application of higher minimum charges on traffic from Natchez than are applied between points in Louisiana on and west of the Mississippi River found to be unduly prejudicial.
4. Defendants required to establish a distance scale of class rates for the transportation of property between Mississippi River crossings, Memphis to New Orleans, inclusive, and western Louisiana and southern Arkansas points as defined in the report, which shall not exceed the rates contemporaneously applied on like traffic for like distances (1) between western Louisiana points and (2) between western Louisiana points and southern Arkansas points.
5. Commercial conditions and carrier competition not being accepted in justification, water competition having practically disappeared and the distances from lower Mississippi River crossings to the border of the Shreveport triangle being relatively short as compared with distances within the Shreveport triangle, further maintenance of blanket rates between lower Mississippi River crossings and points in Louisiana west of the Mississippi River on the one hand and the triangle on the other hand disapproved.
6. Louisiana & Arkansas Railway and Louisiana & North West Railroad permitted to charge higher interstate rates than standard lines.

<sup>1</sup> This report also embraces No. 8920, Natchez Chamber of Commerce *v.* Arkansas, Louisiana & Gulf Railway Company et al.; No. 9036, Natchez Chamber of Commerce *v.* Arkansas & Louisiana Midland Railway Company et al.; No. 6390, Memphis Freight Bureau *v.* St. Louis, Iron Mountain & Southern Railway Company et al. (reopened); No. 7250, Shreveport Chamber of Commerce et al. *v.* Alabama & Vicksburg Railway Company et al. (reopened); Investigation and Suspension Docket No. 1000, Louisiana Case; and those portions of the following fourth section applications by which authority is sought to continue to charge for the transportation of classes and commodities between Kansas City and St. Louis, Mo., and Memphis, Tenn., and points related thereto on the one hand, and New Orleans, Baton Rouge, and Angola, La., Natchez and Vicksburg, Miss., and points related thereto on the other hand, rates which are lower than the rates contemporaneously maintained on like traffic from or to Shreveport, La., and other intermediate points: Nos. 488, Morgan's Louisiana & Texas Railroad & Steamship Company and others; 601, New Orleans & Northeastern Railroad Company and others; 792, New Orleans, Texas & Mexico Railroad Company; 799, St. Louis & San Francisco Railroad Company; 1048, Louisiana Southern Railway Company; 1613, A. D. Hall, agent; 1951, Kansas City Southern Railway Company; 1962, Louisville & Nashville Railroad Company; 2043, Yazoo & Mississippi Valley Railroad Company; 2046, Illinois Central Railroad Company; 2138, Mobile & Ohio Railroad Company; 2174 and 2193, W. P. Emerson, agent; 4218, 4219 and 4230, Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company; 4297, New Orleans Great Northern Railroad Company; 4944, St. Louis Southwestern Railway Company; and 4964, St. Louis Southwestern Railway Company of Texas.

7. Determination of fourth section applications reserved pending further hearing in connection with *City of Memphis Case*, 43 I. C. C. 121, and Docket No. 7304, pending.
8. Carriers to submit commodity rates within 90 days from date of service of order.

*B. F. Martin* for complainant.

*T. K. Riddick* and *J. S. Davant* for Memphis Freight Bureau.

*George T. Atkins, jr.*, and *L. F. Daspit* for Shreveport, La., Chamber of Commerce.

*F. H. Wood*, *Victor Leovy*, and *C. W. Owen* for Southern Pacific lines, Louisiana & Arkansas Railway Company and others; *Fred G. Wright*, *Fred G. Hudson, jr.*, and *C. C. P. Rausch* for St. Louis, Iron Mountain & Southern Railway and its receiver, and Missouri Pacific Railroad Company; *W. M. Hough* and *R. C. Fulbright* for Gulf Coast Lines; *R. Walton Moore*, *Alex M. Bull*, *J. D. Youman*, and *Edgar Moulton* for Vicksburg, Shreveport & Pacific Railway Company and Alabama & Vicksburg Railway Company; *Allen Randall*, *H. B. Helm*, *E. H. Randolph*, *E. C. D. Marshall*, and *Emerson Bentley* for Louisiana Railway & Navigation Company; *F. H. Wood* and *T. J. S. Shelton* for Arkansas & Louisiana Midland Railway Company; *F. H. Wood*, *W. F. Dickinson*, *H. M. Morrison*, and *E. C. Sides* for Chicago, Rock Island & Pacific Railway Company and its receiver; *B. S. Atkinson* for Louisiana & Arkansas Railway Company; *V. Schaffenburg*, *C. W. Brosius*, *Esmond Phelps*, and *Frank Koch* for Texas & Pacific Railway Company and its receivers; *F. H. Wood*, *J. M. Souby*, *Victor Leovy*, and *H. A. Weaver* for Kansas City Southern Railway Company; *S. S. Senne* for Louisiana & North West Railroad Company and its receiver; *J. F. Foege* for St. Louis-San Francisco Railway Company; *F. H. Wood* and *John R. Turney* for St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas; *Willis H. Fowle* and *J. L. Shepperd* for Yazoo & Mississippi Valley Railroad Company; *M. L. Costley* for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company; and *R. Walton Moore* for Director General of Railroads.

*Shelby Taylor*, *B. A. Bridges*, *John T. Michel*, *Henry Jastremski*, and *Wylie M. Barrow* for Railroad Commission of Louisiana; *John B. Rucker* for Baton Rouge, La., Chamber of Commerce; *H. M. Gregory* and *T. E. Wood* for Railroad Commission of Arkansas; *H. J. Fernandez* for Monroe, La., shippers; *J. A. Smith*, *L. M. Nicholson* and *Carl Giessow* for New Orleans, La., Joint Traffic Bureau; *W. D. Coleman* for Alexandria, La., Chamber of Commerce; *W. H. Fitz Hugh* for Board of Trade of Vicksburg, Miss.; and *W. M. Taylor* for Pine Bluff Traffic Bureau, Merchants' Freight Bureau of Little Rock, and Dermott Grocery Company, of Dermott and Eudora, Ark., interveners.

*Winston, Payne, Strawn & Shaw* and *G. A. Kelly* for Shreveport Creosoting Company; *W. M. Barrow* for Southern Cotton Oil Com-

pany, Liberty Oil Company, Caddo Oil Refining Company of Louisiana, Incorporated, and Louisiana Oil Refining Corporation; *F. E. Potts* for Texarkana Pipe Works; *William H. McGuffey* for Procter & Gamble Distributing Company; and *Frank Van Slyck* for Globe Soap Company.

#### REPORT OF THE COMMISSION.

The cases and fourth section applications named are related, have been consolidated and will be treated in one report. The Natchez Chamber of Commerce, complainant in Nos. 8845, 8920, and 9036, is a voluntary association of citizens of the city of Natchez, Miss. Nos. 6390, *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, and 7250, *Shreveport Chamber of Commerce v. A. & V. Ry. Co.*, which were previously dealt with in 39 I. C. C., 224, are before us upon rehearing for further consideration of the distance scale prescribed by us to apply from Memphis and of the propriety of continued maintenance of the so-called Shreveport triangle. In Investigation and Suspension Docket 1000, we suspended until May 29, 1918, the schedules of the carriers proposing a comprehensive readjustment of class and commodity rates applicable between lower Mississippi River crossings and points in Louisiana west of the Mississippi River and points in southern Arkansas, and the carriers thereafter further postponed the effective date of the schedules to August 1, 1918. Contemporaneously with the proposals of the carriers for revision of the interstate rates proposals were made for readjustment of the class and commodity rates applying intrastate within Louisiana west of the Mississippi River. The latter proposals were the subject of petitions to the Railroad Commission of Louisiana, hereinafter called the Louisiana commission, and complete records of the hearings held by that commission have been filed in these proceedings. It should be said here that the Louisiana commission not only intervened and took an active part in the cases under consideration but also invited attendance at its hearings of a representative of this Commission and extended our representative every courtesy.

Other parties intervened as follows: Railroad Commission of Arkansas; New Orleans Joint Traffic Bureau; Shreveport Chamber of Commerce; Baton Rouge Chamber of Commerce; Alexandria Chamber of Commerce; Vicksburg Board of Trade; and Monroe shippers. Only the Vicksburg Board of Trade squarely aligned itself with complainant, seeking on behalf of Vicksburg the same adjustment which may be approved for Natchez.

In Nos. 8845, 8920, and 9036, complainant challenges defendants' class and commodity rates and minimum charges between Natchez and points in Louisiana west of the Mississippi River and in southern

Arkansas as unreasonable and prejudicial, especially with respect to the rates and minimum charges applied on like traffic moving wholly within the state of Louisiana and between points in Louisiana and points in southern Arkansas.

The term "southern Arkansas" as here employed is to be understood as including all territory in Arkansas on and south and east of the line of the St. Louis-San Francisco Railway, Arkinda to Ashdown, thence via the line of the Memphis, Dallas & Gulf Railroad through Murfreesboro to Shawmut, thence via the line of the Missouri Pacific Railroad through Smithton and Gurdon to Camden, thence via the line of the St. Louis Southwestern Railway to Fordyce, thence via the line of the Chicago, Rock Island & Pacific Railway and Missouri Pacific Railroad and connections through Banks and Warren to McGehee.

The Natchez complaints deal only with points in Arkansas on the Missouri Pacific and Louisiana & Arkansas railways, but substantially all points in southern Arkansas as above defined are involved in No. 6390, reopened, and Investigation and Suspension Docket No. 1000, and are in issue here.

There were also heard with these cases those portions of certain fourth section applications by which the carriers seek authority to continue to charge for the transportation of classes and commodities between Kansas City and St. Louis, Mo., and Memphis, Tenn., and points related thereto on the one hand, and New Orleans, Baton Rouge, and Angola, La., Natchez and Vicksburg, Miss., and points related thereto on the other hand, rates which are lower than the rates contemporaneously maintained on like traffic from or to Shreveport, La., and other intermediate points.

It should be understood that all references herein to existing comparative rate situations and current rates and charges are to rate situations, rates, and charges prevailing prior to the establishment by the carriers of rates and charges authorized by the Director General of Railroads in General Order No. 28, dated May 25, 1918. Similarly, references to rates proposed by the carriers and other parties are to proposals made prior to the Director General's order.

In 39 I. C. C., 224, disposing of the complaints of the Memphis Freight Bureau and the Shreveport Chamber of Commerce, among other things, we prescribed maximum distance class rates to apply via direct routes from Memphis to southern Arkansas and Louisiana destinations as follows:

Distance, in miles.	1	2	3	4	5	A	B	C	D	E
200.....	81	69	57	49	41	42	32	28	24	20
300.....	105	89	74	63	53	55	42	37	32	26
400.....	120	102	84	72	60	62	48	42	36	30
500.....	123	112	92	79	66	69	53	46	40	33

and suggested that the carriers revise their rates from New Orleans to correspond more closely to the rates for like distances in the scale fixed from Memphis. At the same time we directed that commodity rates be revised in harmony with our determination in regard to class rates. We also acquiesced in the maintenance of the so-called Shreveport triangle or group and prescribed for application thereto the distance rates as above, for 300 miles. The carriers established the class rates prescribed from Memphis.

Throughout these cases complainants' contention has been for the establishment of a uniform mileage scale to apply not only to and from all lower Mississippi River crossings but also intrastate in Louisiana west of the Mississippi River. To this end the adoption of the original scale approved by us in the *Shreveport Case*, 41 I. C. C., 83, was suggested. The requirements and suggestions of the *Memphis Freight Bureau Case*, and the preservation of the level of rates prescribed by us in other cases affecting this territory, are set up by the carriers as the primary reason for the proposed readjustment. It is stated, however, that the low level of the Louisiana state rates and the need of more revenue were also strongly actuating causes.

The orders in some of the other cases in question have long since expired, but the carriers claim to have borne in mind the principles laid down and state that the readjustment now proposed will conform to all the requirements of these cases, while making for a harmonious permanent structure.

Starting with distinctive issues of rates to and from Natchez the consolidated proceedings have so broadened that we have for consideration substantially the whole of the rate structure between lower Mississippi River crossings, and points in Louisiana west of the Mississippi River, and in southern Arkansas, as shown on the accompanying map.

In Appendix No. 2, there will be found typical comparisons of the existing class rates from Natchez with class rates from other points to stations in Louisiana and Arkansas.

Distance class rates are in effect on most if not all of the lines in Louisiana. These rates, in many instances voluntarily established by carriers and in effect for many years, are typified in Appendix 8. The distance class scales, as will be seen, are not as a general proposition materially in favor of intrastate traffic. In fact in many instances the intrastate rates are higher than those in the *Memphis Freight Bureau Case* scale, and the interstate class rates for like distances from Natchez. They are also higher in some instances than specific point to point class rates upon which class traffic moves in Louisiana. However, the bulk of the rail tonnage within Louisiana



moves on commodity rates, which are and by mandate of the Louisiana commission must be no higher than the distance class rates. Numerous comparisons of record indicate that the Louisiana intrastate commodity rates are lower to a marked degree than those applicable to and from Natchez.



RATES PROPOSED.

The main group of carriers proposes a complete readjustment of the rates between lower Mississippi River crossings and points in Louisiana west of the Mississippi River and in southern Arkansas as follows: The differential 20 cents first class Memphis less than St. Louis provided in the *Memphis Freight Bureau Case* represents a 16 per

52 I. C. C.

cent reduction in the rate for the 46 per cent difference in distance, or 0.348 per cent reduction in rate for 1 per cent distance. Starting with rates to the Shreveport triangle, hereinafter defined, this principle has been applied to other Mississippi River crossings; that is to say, from Vicksburg as compared with Memphis to points in the triangle, there is a 53 per cent difference in distance and applying 0.348 per cent to 53 per cent, it is found that Vicksburg averages 18.44 per cent below the Memphis rate; exactly 19.36 cents, or in round figures 20 cents less. This basis has been applied from Vicksburg, using the percentage relation of classes found in the *Memphis Freight Bureau Case* scale. Rates from Natchez to the triangle have been made the same as from Vicksburg. The average distance from Baton Rouge to the triangle is 50 miles greater than from Natchez, and that from New Orleans approximately 75 miles greater than from Baton Rouge. This creates a relation of 3 and 2, or 6 and 4, hence Baton Rouge has been made 4 cents higher than Natchez and New Orleans has been made 6 cents higher than Baton Rouge, or 10 cents higher than Natchez, which adjustment, the carriers assert, gives recognition to the greater number of single line hauls from New Orleans and what they conceive to be the greater degree of water competition encountered at New Orleans and Baton Rouge. The use of this formula produces a scale of 95 cents first class from New Orleans to the triangle for an average distance of 279.6 miles or roundly 280 miles, although on basis of the scale fixed by us as reasonable for such distance the rate first class would be \$1.

Between points in Louisiana other than the Mississippi River crossings and points in the triangle the class A roads propose a distance scale with a first-class minimum rate of 25 cents. The average haul on less-than-carload shipments intrastate is from 90 to 100 miles. Using the formula in *The Missouri River-Nebraska Cases*, 40 I. C. C. 201, the carriers find that there would prevail a first-class rate of 39 cents, second-class 33 cents, third-class 26 cents, and fourth-class 24 cents, but it is stated that in order to compete with wagon or dray short-haul services the carriers have used a minimum of 25 cents first class and spread the difference out between 5 and 100 miles. For joint line hauls they propose to apply 90 per cent of the sum of the local rates. Exceptions are proposed in the application of the distance scale from Baton Rouge with rates from New Orleans on a differential scale 10 cents higher to points south of the line of the Texas & Pacific Railway, Alexandria via Cypress to Shreveport and to points east of the Shreveport triangle except points on the river lines of the Texas & Pacific and Missouri Pacific.

The Gulf Coast lines and New Iberia & Northern join with the other carriers in the main proposals, but because of their peculiar situation present certain exceptions. The lines of these carriers traverse a highly competitive territory, meeting other trunk lines, especially those of the Southern Pacific lines, at numerous points in crossing Louisiana. From Baton Rouge to New Orleans, the Gulf Coast operates over the tracks of the Yazoo & Mississippi Valley and has no local traffic privileges; therefore, except as to New Orleans business, Baton Rouge is its eastern terminus. It proposes a scale of distance class rates to its stations made with relation to the proposed rates of competing trunk lines and grading into the scale prescribed by us in *New Orleans-Texas Rates*, 38 I. C. C. 1, for application from New Orleans to stations on the Gulf Coast Lines in Texas from the Louisiana state line to Houston. For example, the first-class rate to DeQuincy, just east of the Louisiana line, is 80 cents, while at Mauriceville and Orange, Tex., just west of the state line, it is 82 cents. For application locally between stations west of the Mississippi River it is proposed to apply the distance scale of the class A roads suggested by the main group of carriers and for joint line hauls 90 per cent of the sum of the locals. From Natchez and Vicksburg the hauls to New Orleans, Texas & Mexico stations involve in every case two or more lines, and it is proposed also to apply from these points the basis of 90 per cent of the locals. The New Iberia & Northern asks to disregard distance and make its rates the same as those of the Southern Pacific from lower Mississippi River crossings to parallel stations.

The Vicksburg, Shreveport & Pacific excepts to the proposals of the main group of carriers, especially with respect to the rates from Vicksburg, from which point it is the short line to Monroe and has a through line to Shreveport, forming the northern boundary of the Shreveport triangle. From Memphis to the triangle the distance is 53 per cent of the distance from St. Louis and we prescribed in the *Memphis Freight Bureau Case* a differential scale beginning 20 cents first class St. Louis greater than Memphis. Applying this principle the Vicksburg, Shreveport & Pacific proposes a first-class rate of 85 cents from Vicksburg to the triangle, or rates on a differential scale of 20 cents less than Memphis. The average distance from Vicksburg to the triangle is 140 miles, or 47 per cent of that from Memphis. To points on its line east of Monroe this carrier suggests the rates should be made with relation to the rates from Memphis to those points, the distance to which from Vicksburg and from Memphis is approximately the same because the short line distances make through various junctions. The following table is illustrative:

52 I. C. C.

To Vicksburg, Shreveport & Pacific Railway stations shown below.	From St. Louis, Mo.		From Memphis, Tenn.				From Vicksburg, Miss.			
	Average distance.	First-class rate	Average distance.	Per cent of St. Louis mileage.	First-class differential St. Louis over Memphis.	First-class rate	Average distance.	Per cent of Memphis distance	First-class differential Vicksburg under Memphis.	First-class rate.
Delta Point to Tallulah, La., inclusive.....	Miles. 505.8	116	Miles. 242.8	48	23	93	Miles. 14.3	6	55	38
Lake One to Delhi, La., inclusive..	510.2	116	247.4	48	28	98	33.2	13	46	47
Dunns to Rayville, La., inclusive..	503	116	241	48	23	93	49.6	21	39	54
Girard to Crew Lake, La., inclusive.....	503.1	121	241.1	48	22	99	59.9	24	35	64
Millhaven to Swaze, La., inclusive.....	505.4	125	243.4	48	20	105	71.2	29	33	72

<sup>1</sup> The rates to stations Millhaven to Swaze, although not yet changed in the tariff, have been corrected in this table, for reasons stated in the record.

The Vicksburg, Shreveport & Pacific also opposes the basis of 90 per cent of the local rates for joint line hauls to points outside of the triangle urging that it will not produce a fair relative adjustment, and that as to Vicksburg it is especially unfair, since the Vicksburg, Shreveport & Pacific is the only through line from Vicksburg to the west and without branch lines, and the distances are comparatively short to a large portion of the state. To the territory north of the Vicksburg, Shreveport & Pacific and west of the Missouri Pacific through Monroe this line proposes a differential adjustment based on the percentage the Vicksburg distance is of the Memphis distance. This carrier also proposes a scale from New Orleans beginning with 17 cents first class higher than Vicksburg to points in the triangle, or a \$1.02 scale instead of a 95-cent scale as proposed by the main group of carriers. While other lines propose a scale of \$1.15 first class, or 10 cents higher than Memphis, from Vicksburg and all other lower Mississippi River crossings to the Texarkana group, the Vicksburg, Shreveport & Pacific is unwilling in view of the difference in distances to carry the same rates from Vicksburg as from New Orleans and proposes rates as shown in Appendix No. 7.

The Louisiana railroad commission does not deny that in the existing adjustment there may be undue prejudice which should be removed. It is opposed, however, to a readjustment which would upset the present theory of rate making within the state although not resisting any reasonable increases in the state rates should such be necessary to properly readjust interstate rates. It supports the Louisiana Railway & Navigation Company in the latter's proposal that from New Orleans and Baton Rouge to the triangle the rates should be made on an 85-cent scale rather than a 95-cent scale, thus in effect assenting to an increase over the present rates beginning

25 cents first class. The Louisiana Railway & Navigation Company advocates a differential basis to points outside the triangle in lieu of the application of 90 per cent of the sum of the local rates.

The New Orleans Joint Traffic Bureau proposes for application between New Orleans and the Shreveport triangle the following rates: 75, 67, 52.5, 45, 37.5, 39, 30, 26.5, 22.5, 19, and further proposes that the same rates should obtain to and from Baton Rouge, Natchez, and Vicksburg; in other words, that there should not only be the grouping at the triangle but also grouping from all of the lower Mississippi River crossings. The 75-cent scale suggested is arrived at by taking the average distance from the four river crossings to the triangle and adding to a distance scale, urged as reasonable, what is termed a reasonable allowance for bridge service or river transfer. Between the four lower Mississippi River crossings and points in Louisiana north of the Shreveport triangle, it suggests that the rates grade up sharply, subject to the following maximum scale: 100, 85, 70, 60, 50, 52, 40, 35, 30, 25. This maximum scale of rates, it will be observed, is precisely the percentage scale of class relationship obtaining in connection with the original *Shreveport Case* scale of rates.

It is apparent from these varying proposals that the different interests have found it difficult, if not impossible, to get together.

What has preceded relates to the class rates which will be more fully discussed hereinafter.

These several proposals as to class rates were embodied in tariff schedules filed here, which are now in abeyance in Investigation and Suspension Docket No. 1000. The same tariffs also carried revised commodity rates, but the carriers do not ask approval of the commodity rates so named for the reason that said rates are figured on an approximate increase of 15 per cent over the figures which they originally intended to propose, and are, therefore, not in harmony with the class-rate adjustment constructed and presented here prior to the attempts of carriers generally to secure a horizontal 15 per cent increase in rates.

The main group of carriers has presented for approval commodity rates constructed on what they state to be the basis of our expressions in the *Memphis Freight Bureau Case* and in *City of Memphis v. C., R. I. & P. Ry. Co.*, 43 I. C. C., 121, to the effect that commodity rates should be made to conform to the class rates and—

in determining the commodity rates the differential should be the same percentage of the differential in the rate on the class to which the commodity belongs as the percentage the commodity rate is of the class rate.

The formula followed is that set out in Appendix No. 4.

52 I. C. C.

The Vicksburg, Shreveport & Pacific states in its behalf that the following table covering the carload rates on bagging and ties illustrates the commodity adjustment:

A. Distance. B. Rates proposed by carriers other than V., S. & P. Ry. and as noted. C. Rates proposed by V., S. & P. Ry.

To—	From Memphis.			From Vicksburg.			From New Orleans.		
	A	B	C	A	B	C	A	B	C
Shreveport group.....	1 298	21	21	1 140	17	17	1 259	19	21
South Mansfield group.....	1 371	27	27	1 206	19	23	1 311	24	24
Intermediate group.....	1 374	27	27	1 187	19	22	1 182	24	24
Lake Charles group.....	1 437	32	32	1 244	19	27	1 303	24	24
Morningsport.....	345	21	21	193	19	17	326	24	24
Cotton Valley.....	306	21	21	167	19	17	319	24	24
Dubach.....	304	21	21	120	19	17	287	24	24

1 Average. 2 Maximum between points in Louisiana. 3 L. R. & N. Co. proposes 17.

On brief this defendant says:

The foregoing table is illustrative of the territory west of a line running north and south through Monroe, where Vicksburg competes with Memphis and New Orleans rather than Memphis and Natchez. On the line of the Missouri Pacific running north and south through Tallulah the competition of Vicksburg is with Natchez rather than New Orleans, but the adjustment proposed by the other carriers is just as inconsistent as that to the territory west of the line through Monroe. For instance, to Gassoway Spur, 193 miles from Memphis, the rate is 17 cents, while from Vicksburg, 64 miles, the rate proposed by the other lines is 24 cents (the maximum between points in Louisiana) and from Natchez, 121 miles, 13 cents. The rate proposed by the V., S. & P. from Vicksburg is 11 cents. Under the rates proposed by the other lines the disparity between Vicksburg and New Orleans, also Memphis, is even more marked in the general commodity rates than in the class rates. To the Shreveport group, where the distance from New Orleans is 119 miles greater than that from Vicksburg, the class rates from New Orleans are based on a scale of differentials 10 cents first class over Vicksburg. The general commodity rates having been constructed as above described, in those instances where the commodity rate is relatively low, the differential practically disappears. For example, as shown by the above table, the commodity rate on bagging and ties from Vicksburg is 17 cents and from New Orleans as proposed by the other lines 19 cents. Under the 17-cent scale of differentials which the V., S. & P. contends for, the rate from New Orleans would be 21 cents, resulting in a much fairer relationship. To the South Mansfield group the mileage from Memphis as well as from New Orleans greatly exceeds that from Vicksburg, but the proposal of the other lines does not reflect that condition. These illustrations are typical.

It will be seen that the proposed systems of commodity rates necessarily stand or fall with the class-rate schemes proposed.

#### DISCRIMINATION.

Except in so far as they may be unlawfully prejudicial to interstate or foreign commerce or be urged as a measure of reasonable interstate rates, it is no part of our duty to inquire into the reason-

ableness of the rates approved or prescribed by the Louisiana commission solely for intrastate application. Water competition is the dominant influence in the Louisiana rate fabric; at least, it is the consideration with which all of the interests in these cases have concerned themselves in one way or another. It must, in the nature of things, have great weight in determining the issue of discrimination, because if at this time water competition is such as to control in whole or to any considerable extent the measure of the rail rates within the state and is not similarly forceful in its effect upon interstate rates to and from Natchez, lower rates in Louisiana are not necessarily violative of the act to regulate commerce.

Louisiana has a total of 4,794 miles of inland waterways, substantially all of which at some time in the past were navigated. We are not told in precise terms just what service is now operated between points in Louisiana, but some idea of the situation may be had from an examination of Appendix No. 3. It is clear that here and there, especially in southern Louisiana, there is some actual water service on these inland streams. The streams are in the main navigable and are potential in their influence on rail service and rates. Exactly similar conditions do not prevail as to Natchez, but the record does not establish that any of the points in Louisiana now connected by water with other points in Louisiana are not as accessible by water in conjunction with Mississippi River craft to and from Natchez. There is therefore potential competition to and from Natchez.

New Orleans enjoys water service by direct lines not only up and down the Mississippi River, but to and from points on some of the inland streams, especially in southern Louisiana. The crossings north of New Orleans do not have as frequent Mississippi River service, but they do to some extent enjoy, or are so located that they may fully avail of, water service on the Mississippi to and from the mouths of inland streams with transfers to other water craft for movement of traffic to and from points on such streams as the Red, Black, Ouachita, and Atchafalaya rivers. Therefore it is correct to say that the actual or potential water competition at all of the crossings is such as to place them on an approximate parity in this respect.

Whatever may be said of rate differences and the similarity or lack of similarity of transportation or traffic conditions, the record indicates no effort on the part of the Louisiana authorities to build a wall around the state in the interests of its shippers or to obstruct the free movement of traffic to and from interstate points.

New Orleans and Baton Rouge reach a considerable part of the Louisiana territory west of the Mississippi River on single-line hauls, while Natchez has a single-line haul only to points on the Missouri Pacific. As to the Missouri Pacific, there must also be used the

Natchez & Southern Railway and the Natchez & Louisiana Railway Transfer Company, but counsel for the Missouri Pacific concede these to be one line for rate-making purposes. This situation creates some difference in favor of New Orleans and Baton Rouge, but the difference is not such as to constitute dissimilar conditions warranting the existing discrimination.

The bulk of the business done by Natchez at points in Louisiana and southern Arkansas is within a radius of approximately 200 miles. Testimony of shippers, including nine wholesale grocers, one candy manufacturer and jobber, one coffee roaster and jobber, one wholesale dry goods merchant, one wholesale hardware merchant, a representative of one foundry and machine shop doing general repair work, one wholesale drug dealer, and a representative of a packing house, was offered, all showing that the territory served by them was as follows:

Points on the Texas & Pacific Railway, south to New Roads, La.

Points on the Louisiana & Arkansas Railway, west to Jonesville, La.

Points in general territory between Alexandria and Monroe.

Points on the St. Louis, Iron Mountain & Southern Railway (Missouri Pacific) line known as the Northwestern division, to Felsenthal, Ark., and the line known as the M., H. & L. division to southeastern Arkansas.

Points on the Black River and north and south on the Mississippi River, principally by boat.

Wholesale grocers distributing cowpeas, cotton seed and other articles designated as seed, including lespedeza, corn, oats, rye, barley, wheat, and seed potatoes, sell throughout the state of Louisiana going as far in the northwest as Shreveport, and in the southwest to the western part in that state of the Southern Pacific line.

Widespread sales are made by wholesale grocers throughout the state. Similarly, a candy manufacturer and jobber shows occasional sales and distribution outside the limited jobbing territory previously outlined, and names Shreveport, Alexandria, and Baton Rouge as points where he sells.

The packing-house interests and wholesale grocers buy salt in carloads at Avery and Weeks Island, in southern Louisiana, distributing it throughout Louisiana, and there are purchases of cotton and Louisiana products, such as sugar, rice, and coffee from plantation points and from New Orleans.

Many of the witnesses testified to abandonment of trade in territories beyond the limits defined because of unsatisfactory service and rate disadvantages. They also testified of efforts to extend their trade, notably to points on the Texas & Pacific and Louisiana & Arkansas and on the St. Louis, Iron Mountain & Southern at Bastrop, including adjacent territories. The packing-house inter-



ests assert that they have the capacity and want to buy live stock throughout Louisiana if reasonable rates and service can be secured.

All of the testimony establishes that competition is met at New Orleans, Baton Rouge, Shreveport, Alexandria, and Monroe in Louisiana, and in some lines at Little Rock and Pine Bluff, Ark., Memphis, Tenn., and Vicksburg, Miss. New Orleans competition is urged as by far the most powerful. Epitomized, Natchez is in sharp competition at Louisiana and Arkansas points, not only with Memphis and other lower Mississippi River crossings, but with triangle points and such interior commercial centers as exist in Louisiana.

There are articles of commerce moving between points in Louisiana which do not move between Natchez and Louisiana points; but generally speaking, Natchez occupies the same relative position as do towns in Louisiana, its location on the opposite bank of the Mississippi River constituting the only material difference.

Natchez jobbers as a whole, as distinguished from manufacturing or producing receivers and shippers of freight, can not and do not expect to reach the extreme limits of the state of Louisiana in contest with jobbers in the far western and southwestern parts of the state, but where common ground is met and even to some territory beyond that common ground, the influence of the state rates is effective against Natchez. Inferior service to and from Natchez is said by complainant to have had some influence, but there is no doubt that the limitation of territory now available to Natchez is attributable in some degree to the existing rate disparities.

Although widely differing opinions were offered as to the relative operating conditions in Louisiana, the facts in evidence establish that the conditions in that state as a whole are not materially better or worse than in Texas or Arkansas. Exhibits are of record setting forth performances of carriers in these states, density of population and traffic and like matters, and there is testimony of operating officials of several carriers concerning the character of country traversed, kind of soil, overflows, and flood conditions, all tending, as we see them, to support the view that there is a substantial similarity of conditions. Addressing themselves to the question of uniform percentage relation of the classes, witnesses for the Missouri Pacific, which has its own or affiliated lines in Arkansas, Louisiana, and Texas, testified that the traffic conditions in this territory were largely the same.

52 I. C. C.

## CLASS RATES.

The adjustments proposed are, as already indicated, predicated upon the scale fixed in the *Memphis Freight Bureau Case*, and there are shown below class-rate scales prescribed or approved by us, with the percentage relation of the class rates thus created:

	1	2	3	4	5	A	B	C	D	E
(1) Rate <sup>1</sup> .....	77	66	54	46	37	40	31	27	23	19
Percentage relation.....	100	85	70	60	48	52	40	35	30	25
(2) Rate <sup>1</sup> .....	89	78	67	57	45	46	42	35	27	25
Percentage relation.....	100	88	75	64	51	52	47	39	30	24
(3) Rate <sup>1</sup> .....	159	133	122	116	86	89	81	63	51	44
Percentage relation.....	100	85	70	60	50	52	41	35	30	26
(4) Rate <sup>1</sup> .....	147	125	104	96	75	79	70	58	46	39
Percentage relation.....	100	85	71	65	51	54	48	33	31	26
(5) Rate <sup>1</sup> .....	62	53	45	37	28	31	22	19	16	11
Percentage relation.....	100	85	70	60	45	50	35	30	25	17
(6) Rate <sup>1</sup> .....	81	69	57	46	36	37	29	25	21	17
Percentage relation.....	100	85	70	56	44	46	36	31	26	21
(7) Rate <sup>1</sup> .....	81	69	57	49	41	42	32	28	24	20
Percentage relation.....	100	85	70	60	50	52	40	35	30	25

<sup>1</sup> Scale of 200 miles.<sup>2</sup> New Orleans, La., to Houston, Tex.<sup>3</sup> St. Louis, Mo., to El Paso, Tex.<sup>4</sup> St. Louis to Texas common points.

NOTE.—Round figures used; fraction of 0.5 or more being added and fractions of less than 0.5 dropped.

These scales are all shown in greater detail in Appendix No. 1 and have been selected partly because they apply in western classification territory.

They involve: (1) Rates between Oklahoma and Texas points and between Shreveport and Texas points; (2) rates between New Orleans and Orange, Beaumont, Houston, and Galveston, Tex.; (3) rates from Missouri River and other points to New Mexico; (4) rates from St. Louis to Texas common points; (5) rates between Missouri River cities and points in Nebraska; (6) rates from Memphis to points in Arkansas; (7) rates from Memphis to points in Louisiana and southern Arkansas.

Nothing of record establishes material difference in this general southwestern territory in the physical or transportation conditions in their relation to rate making and we believe something like uniformity of rate structure is desirable, practicable, just and reasonable.

While under the terms of our order No. 6390 was reopened solely for further consideration of the basic scale prescribed therein, it will be observed that we fixed rates only for 200, 300, 400, and 500 miles, leaving the gradation to the carriers. The rates established by them for the intermediate distances are criticized by the Memphis interests as providing too abrupt jumps and not making a fairly graded adjustment. Under these conditions the figures for the intermediate distances may be considered. Following is a table intro-

duced by the Memphis interests in demonstration of the existing rates and their idea of a reasonable gradation:

Distance, in miles.	1	2	Distance, in miles.	1	2
200.....	81	81	Over 330 to 345.....		112
210.....	87	85	Over 345 to 360.....		114
215.....	93	85	Over 360 to 375.....		116
220.....	93	89	Over 375 to 390.....		118
230.....	99	89	Over 390 to 400.....		120
Over 230 to 235.....	105	93	Over 400 to 415.....		122
Over 235 to 260.....	105	97	Over 415 to 430.....		124
Over 260 to 275.....	105	100	Over 430 to 445.....		126
Over 275 to 290.....	105	103	Over 445 to 460.....		128
Over 290 to 300.....	105	105	Over 460 to 475.....		130
Over 300 to 315.....		108	Over 475 to 490.....		132
Over 315 to 330.....		110	Over 490 to 500.....		132

1. Now maintained by carriers.

2. Proposed by Memphis Freight Bureau.

The scale proposed by the Memphis interests is not materially out of line with the scale originally approved by us in the *Shreveport Case*, in so far as concerns the blocks and the rate of progression. However, our disposition of these proceedings renders unnecessary any specific action in this respect.

No important criticism of the scale was offered by other parties, but there would appear to be need for some revision to align the rates from Memphis with rates elsewhere in this general territory.

A representative statement filed by defendants shows that during July, August, September, and October, 1916, there were handled from New Orleans, Lake Charles, and Alexandria to Louisiana points 41,401,106 pounds of less-carload freight, divided:

	Pounds.	Per cent.
First class.....	6,092,053	14.7
Second class.....	4,018,164	9.7
Third class.....	9,108,297	22
Fourth class.....	22,182,632	53.6

Defendants also show the results of investigations conducted at 64 stations, large and small, in Louisiana, to the effect that the direct station cost of handling less-carload freight, at one terminal only, approximates 8.9 cents per 100 pounds, or \$1.78 per ton. These figures are vigorously assailed but are the best afforded, and since they do not appear to be vitally defective may be used for illustrative purposes. It is also shown for nine of the important carriers in Louisiana that their average ratio of operating expenses to operating revenues for the years ended June 30, 1915, 1916, and 1917, was 74.38 per cent, 72.55 per cent, and 68.31 per cent, respectively, or a general average of 71.75 per cent. However, the terminal cost figures are almost identical with those found in the *Shreveport Case*, in which we adopted for the basic first-class rate 23 cents. This

52 I. C. C.

figure was also adopted in *The Missouri River-Nebraska Cases*. In the cases now before us the carriers, while contending that an initial first-class rate of 39 cents is yielded under the formula referred to, propose an initial rate of 25 cents first class, recognizing the futility of applying the higher figures if short-haul dray competition is to be successfully met.

Using these figures and applying the formula followed in *The Missouri River-Nebraska Cases*, there is produced an average rate of 25 cents, or rates for classes 1 to 4 of 35, 30, 25, 21.

Approximately the *Shreveport Case* scale is adjustable to the holdings in the several cases in which we have approved rates for application in this general territory. It results in somewhat lower figures than the *Memphis Freight Bureau Case* scale for 200 miles and over, but is somewhat higher for the longer distances than the rates prescribed in *The Missouri River-Nebraska Cases*. The application from all of the lower river crossings of a somewhat higher scale for the shorter distances and the disruption of the Shreveport triangle will undoubtedly yield some increased revenues.

The carriers' proposals all have relation to or are predicated upon rates from Memphis, but it is our view that the fixing of a distance scale approximating or based upon the *Shreveport Case* scale for uniform application will more equitably align the river crossings, Memphis and south, and better enable them to stand on the same competitive footing, participating in the traffic upon their respective merits.

#### COMMODITY RATES.

The carriers seek to cancel many existing commodity rates within Louisiana, substituting class rates therefor. The proposal so made and the increases asked in many other instances are linked with the general commodity schemes and must be dealt with conjointly.

As heretofore stated, the preponderance of the traffic in Louisiana moves on commodity rates, some of which are distance scale rates and some specific rates. Much of the record is devoted to the details of these rates showing that they are not grounded upon any uniform plan or principle, but have been established to meet the special needs of different communities, and adapted to the peculiar conditions in each case. For this reason, and because of the numerous errors in the suspended schedules which were disclosed on hearing and cared for by voluminous supplements which were afterwards suspended, and the fact that at the eleventh hour carriers offered entirely new proposals, it is wholly impracticable to undertake any thorough analysis or discussion.

Whether or not commodity rates are constructed with definite relation to class rates for the classes to which commodities are  
52 L. C. C.

assigned, a commodity rate adjustment as a whole should have due regard for the corresponding class rate adjustment. That is to say the same basic principles should be observed. Natchez to the full extent of the requirements of its traffic should be accorded commodity rates corresponding with those provided at other lower Mississippi River crossings, and such rates for like distances should not exceed rates between points within Louisiana on and west of the Mississippi River.

#### SHREVEPORT TRIANGLE.

The so-called Shreveport triangle is shown by heavy black lines in the map on page 110, or, more particularly described, is the triangular area, the three corners of which are Shreveport, Monroe, and Alexandria, the northern boundary being the Vicksburg, Shreveport & Pacific Railway; the eastern boundary the St. Louis, Iron Mountain & Southern Railway (Missouri Pacific); and the western boundary the Texas & Pacific Railway. Formerly only the three corner points were grouped for rate-making purposes, but our utterance at page 244 of the report in the *Memphis Freight Bureau Case*—points within the triangle of which Shreveport, Monroe, and Alexandria are the apices, and points on lines forming the sides should also be included in the Shreveport group and should take the same rates—

brought about the inclusion in the group of the intermediate stations on the roads forming the sides of the triangle as well as interior stations in the triangle.

The grouping had its origin in the rates established by the boat lines operating to Shreveport, Monroe, and Alexandria in the early days before railroads were constructed in this section. The railroads upon their completion adopted the rates maintained by the boat lines. Complainant supported by Vicksburg and Monroe interveners seeks the disruption of the triangle. Baton Rouge and Alexandria interveners also favor such action while all other parties urge its continuance at least to the extent of equal rates to the three corners.

The potentiality of water competition at triangle points was the subject of much testimony. If the influence of such competition from St. Louis and defined territories to the Shreveport group no longer exists, as was said in *Texarkana Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 569, there is no reason to assume that it continues from Memphis or the lower Mississippi River crossings and nothing in this record supports such assumption.

Two other factors are strongly urged for preserving the group intact, i. e., commercial competition and carrier competition. Regu-

52 I. C. C.

lation of the former, as we have often said, is not our function; that is to say, our powers do not extend to the preservation of rates in order to enable one point or community to compete on approximately equal terms with another irrespective of other transportation factors. As to carrier competition it is contended that there must be an equality of rates to enable each of the triangle corners and the carriers serving such corners to share in traffic thereto for distribution to the interior. According to the evidence, however, no more than 25 to 30 per cent of the tonnage distributed by Alexandria, Shreveport or Monroe is shipped to interior points in the triangle and it may be observed that eastern defined territories rather than the lower Mississippi River crossings furnish the preponderance of the tonnage into the triangle group. Moreover recognition must be given to changed conditions resulting from federal operation of the railroads as a unified transportation system.

With the substantial disappearance of water competition, urged as responsible in large measure for the grouping, the boundaries of the group are more than ever artificial and there would appear to be just as cogent reasons for maintaining equal rates to other junction points beyond the confines of the triangle, they being subject to like carrier competition and in position to serve much the same territory.

In the *Memphis Freight Bureau Case*, it was found that the average distance from Memphis to Alexandria, Shreveport, and Monroe was 298½ miles, or, in round figures, 300 miles, and this distance was fixed as controlling to all points within the triangle. The average distances by actual short lines to all stations of any consequence within the triangle are, from Natchez, 129 miles; from Vicksburg, 159 miles; from Baton Rouge, 178 miles; and from New Orleans, 259 miles. The nearest point in the triangle to Natchez is Georgetown, to which the distance is 70 miles, and the farthest point, Shreveport, distance 190 miles. It will be seen, therefore, that a blanket rate to the triangle would require Natchez to pay to the nearest point the same rate applicable to Shreveport, an added distance of 120 miles.

The area of the entire state of Louisiana is 45,409 square miles and the triangle, with each of its sides about 100 miles in length, comprises approximately 5,000 square miles. Memphis is 239 miles and Vicksburg 76 miles from Monroe. Natchez is 70 miles from Georgetown and Baton Rouge and New Orleans are 124 and 203 miles, respectively, from Alexandria. Therefore the average from all of the lower Mississippi River crossings to the eastern border of the triangle is 142 miles while from the three crossings nearest the triangle, i. e., Vicksburg, Natchez, and Baton Rouge, the average

distance is only 90 miles. In *Mutual Rice Trade & Devel. Asso. Houston v. I. & G. N. R. R.*, 23 I. C. C., we said at pages 223, 224:

It is fundamental that large blankets are justified for long distances which would not be for shorter distances.

In *Sawyer & Austin Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 21 I. C. C., 464, we indicated that where carriers extended a blanket adjustment of considerable breadth almost to the doors of an important consuming point, it would be difficult for them to establish the reasonableness and lawfulness thereof and this general principle we have recognized in other cases as follows:

*Hutchinson Traffic Bureau v. A., T. & S. F. Ry. Co.*, 40 I. C. C., 160, 163:

The groups maintained for shipments to more remote destinations generally are larger than the groups maintained for shipments to nearer destinations.

*Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.*, 40 I. C. C., 619, 637:

Where a rate group is so large as this \* \* \* it may very well be that a rate which is entirely reasonable when applied to the average haul to points within the group is unreasonable when considered as applied to a haul to the nearer portion of the group to which the distance is materially less.

Here it will be observed a group is sought to be maintained the breadth of which is 120 miles or more. The distance from Natchez to the group is only 70 miles and the proximity of Vicksburg, Natchez, and Baton Rouge an average of only 90 miles or from 58 per cent to 75 per cent of the breadth of the group. Such a situation obviously militates against the nearby crossings and should not in justice prevail.

There must be strong, compelling, and lawfully recognizable reasons for approval of rate groups, and a showing of unlawful discrimination is always sufficient for disapproval.

Except that there is still actual water movement in a limited way to and from Monroe, actual water competitive conditions at triangle points have disappeared, and there is little if any potential water competition. Commercial conditions offer no valid reason for further approval of the group, and carrier competition can not be accepted in justification of the grouping.

#### ALLOWANCE FOR RIVER TRANSFER.

Among the contested features of the carriers' proposals is that of the addition of 20 constructive miles to compensate them for expenses incurred in crossing the Mississippi River at Natchez (see note), Vicksburg, Baton Rouge, and New Orleans. These crossings differ from Memphis in that the service is ferry service, while at

NOTE.—As to Natchez the tariffs provide "in figuring mileage rates to or from Natchez, Miss., via the Missouri Pacific Railroad or the Louisiana & Arkansas Railway add 26 miles for road hauling and Mississippi transfer to the distances to or from Vidalia, La."

Memphis the crossing is by bridge. In the *City of Memphis Case*, *supra*, we said, at page 126:

While no doubt the Commission took into consideration the bridge tolls in effect over the old bridge at Memphis in determining the issue of the reasonableness of the present class and commodity rates, it does not necessarily follow that 2 cents is the maximum arbitrary which the carriers may charge on all traffic, nor that that must be the differential of the state class rates under the interstate class rates. At the informal conference of all the interested parties the carriers showed that the following tolls are now paid to the new bridge company on traffic passing over that bridge:

Classes.....	1	2	3	4	5	A	B	C	D	E
Tolls.....	3	3	3	2	2	2	1½	1½	1½	1½

In the absence of evidence that these bridge tolls are unreasonable, and without making any finding thereon, we consider that these arbitraries may tentatively be used by the carriers in removing the discrimination against Memphis.

Complainant urges that the addition of 20 miles in figuring distance rates would be unreasonable and discriminatory. It shows in an exhibit, Appendix No. 5, the differences between the rates for the actual distances to and from Natchez and the rates for those distances with 20 miles added; in other words, shows the actual charges for crossing the river at Natchez, compared with the charges or bridge tolls at Memphis. Complainant's view is that the arbitraries at Natchez should at least be as low as approved bridge tolls at Memphis, and also that the mileage allowance scheme is wrong in principle. Figures submitted by the carriers are summarized below:

Railroad.	Expenses of operating transfer.	Operating expenses per mile of road.	Equivalent of river transfer in miles of road.
Southern Pacific at New Orleans.....	\$310,328.38	\$7,134.19	<sup>1</sup> 43.56
Texas & Pacific at New Orleans.....	202,391.14	7,107.00	<sup>2</sup> 28.05
St. L., I. M. & S. at New Orleans.....	202,391.14	6,873.00	<sup>3</sup> 29.04
N. O., T. & M. at Baton Rouge.....	121,384.88	5,195.41	23.36
L. R. & N. at Baton Rouge.....	130,290.56	3,943.45	33.04
V., S. & P. at Vicksburg.....	173,124.73	6,992.00	24.67

<sup>1</sup> Southern Pacific operates two transfers at New Orleans, one for freight exclusively, the other primarily for passenger, but over which some freight moves. Expense of operating the exclusively freight service is \$190,867.34.

<sup>2</sup> Transfer service performed for Texas & Pacific and St. L., I. M. & S. jointly by Trans-Mississippi Terminal Railroad Company.

These figures include only the expenses occasioned by the actual river transfer service, freight and passenger, and are for the year ended June 30, 1916. Defendants maintain that they are entitled to reimbursement for costs incurred in performing this service, and that the service and expenses are not properly comparable with bridge tolls, nor with the conditions under or the amount which bridge owners are paid for the use of their property and the investment represented therein.

The proposal to add 20 miles is in consonance with the rule of the Louisiana railroad commission with respect to intrastate traffic



which crosses the Mississippi River and is handled on distance rates. That commission through its counsel states on brief:

It has always been the practice in the state of Louisiana to permit the carriers to add for this transfer service an arbitrary of 20 miles in applying their distance tariff rates. And in naming specific rates this 20-mile allowance has been taken into consideration. The plan may be subject to some objections. By applying the same rule at each crossing, however, it can not be attacked as discriminative. It is not fairly comparable to a bridge toll, since entirely different factors enter into crossing the river by a transfer from those which govern the crossing of the river by bridge.

Where boats or barges are used, inclines must be provided on both sides of the river and, on account of the extreme high and low states of water, are not as cheaply maintained as are the permanent approaches of a bridge. The cost of operating the transfers has been considered by the Louisiana commission and no evidence has been introduced to contradict the figures presented by the carriers as to this cost. The figures presented by the carriers as to the cost of river transfer have been accepted by the Louisiana commission as substantially correct and seem to justify a continuance of the practice heretofore followed at the Mississippi River crossings in the state of Louisiana, allowing 20 miles in the case of mileage rates for the Mississippi River crossings. If this plan is proper for the Louisiana crossings, it should be approved and followed at Natchez and Vicksburg, and we can urge no reason why this should not be done.

#### DIVISION OF CARRIERS INTO CLASSES A AND B.

Pertaining to the division of the carriers in Louisiana into classes A and B, the former to take standard rates and the latter something greater, it may be said that while such division is now observed within the state of Louisiana we are not informed of the characteristic elements or the line of demarcation employed by the state authorities in determining the classes. Furthermore, in asking this Commission to approve such classification no definite proposal is made, the only suggestion being that certain of the roads stand in greater need of revenue than do the others; and it may be that between the roads proposed for inclusion under class A there are as great differences in financial standing as obtains with respect to the differences between said class A roads and those proposed for class B. Data submitted by the Louisiana & Arkansas Railway, the most important of the lines seeking class B classification, establish that this is a comparatively new line serving a thinly settled country, that it handles a very small tonnage of through traffic, that its tonnage consists largely of the products of the forests, which are being rapidly depleted, and that the development taking place in the country served by it is small and unimportant. This carrier has paid no dividends since 1912.

Appendix No. 6 shows in comparative form the traffic density and other statistics of this road and other class I and class II roads in the western district. There is also a comparison of statistics of revenue and operating expenses of this road with present class A

roads in Louisiana. The record shows that for the period July 1 to December 1, 1916, the net income of the Louisiana & Arkansas Railway was something less than \$50,000, and that for the first six months of 1917 there was a deficit of \$1,769.90.

The Louisiana & North West Railroad extends for 121 miles from Natchitoches, La., to McNeil, Ark. At the present time and for several years past it has been operated at a loss and is now in the hands of a receiver. The receivership dates from August, 1913, since which time the Louisiana & North West Railroad has accumulated a deficit of \$130,000 in operating expenses and interest on receiver's certificates. For two years and eleven months from August, 1913, its gross earnings were \$2,669.97 per mile per annum, or less than one-fourth of the general average of all class I and class II roads in the western district for the fiscal years 1913-14. This road has depended very largely upon its tonnage of forest products which has decreased about 50 per cent, with only a slight increase in agricultural tonnage as an offset.

#### JOINT RATES AND SPECIFIC THROUGH RATES.

To a large part of the state of Louisiana, as well as to Arkansas, the carriers have failed to provide joint rates or specific through rates from Natchez. The exceptions are points in Louisiana, such as Baton Rouge, New Orleans, Alexandria, Shreveport, Monroe, points on the Texas & Pacific from Torras to Ferriday, inclusive, points on the Missouri Pacific from Natchez to the Arkansas state line, and points on the Louisiana & Arkansas. Shippers at Natchez testified to resulting injustice and to the pressing need for the establishment of such rates as one means of remedying the existing troubles. On the part of the carriers no real attempt was made to justify this situation.

#### MINIMUM CHARGES.

The minimum charge on shipments from Natchez to Louisiana points is 50 cents, while within Louisiana the minimum charge for two lines is 40 cents, and in one case 25 cents. This is shown to operate to the disadvantage of Natchez, a shipper of coffee testifying that his shipments were all in small lots, many weighing 100 pounds or less; that he meets competition from New Orleans and has to pay 50 cents per shipment, while New Orleans gets the benefit of the lower minimum. No evidence was offered to justify this difference.

We are not impressed with the view expressed by some of the parties that the respondents merely seek to use our expressions in the *Memphis Freight Bureau Case* as a basis or medium for foisting upon the shipping public an otherwise unwarranted upward revision

of rates. Obviously there is and has been great need for improvement of the general structure of rates in the southwest and if the proposals of the carriers do not meet the existing need that fact is to be determined and the necessary remedy prescribed, and these proceedings clearly afford the proper vehicle for the accomplishment of such an end.

The adjustment of rates between Mississippi River crossings and Shreveport triangle points on the differential principle, as proposed, would bring about equalization of geographical advantages and disadvantages, but, as we have frequently stated, each community is entitled to its natural advantages and antithetically should bear the results of its natural disabilities.

#### CONCLUSIONS.

Upon consideration of the record we reach the following conclusions:

The carriers first ask a finding that the water competition, of which the Louisiana rate structure is the outgrowth, has now largely disappeared, and then ask us to find that there is now active water competition in a limited way in nearly all portions of the state with potential competition present everywhere. The facts are, as hereinbefore pointed out, that in triangle territory this competition is negligible, if existent at all, while elsewhere, and especially in the southern part of the state, there is some actual competition and generally prevailing potential competition. The latter is as forceful at Natchez as at other Mississippi River crossings and interior Louisiana points, and there are no other substantially dissimilar conditions. The prejudice against Natchez with particular respect to the intrastate rates in Louisiana and rates between points in Louisiana on and west of the Mississippi River and points in southern Arkansas is therefore undue and must be removed.

The failure to establish joint rates and specific through rates between Natchez and points in Louisiana west of the Mississippi River and in southern Arkansas creates an unreasonable condition and is unduly prejudicial to Natchez. Joint rates and specific through rates should be provided to and from Natchez in such manner and to the same extent (1) as between points in Louisiana on and west of the Mississippi River and (2) as between said points in Louisiana and points in southern Arkansas.

The higher minimum charges applicable from Natchez to Louisiana points west of the Mississippi River are unduly prejudicial to Natchez.

Dealing with the territories of origin and destination embraced in these proceedings, and having regard to the close proximity to the triangle of Natchez and the other river crossings here involved, we

conclude that there is no longer justification for maintaining the Shreveport triangle group at equal rates. In reaching this conclusion we take full cognizance of the disruption of a long standing rate relation and the disturbance of commercial conditions.

We perceive no fundamental error in the principles underlying the addition of constructive mileage to cover the cost of river transfer. An allowance of 20 miles is not unreasonable and this uniform addition to the actual distance to or from the west bank of the Mississippi River may be made in figuring rates to and from Vicksburg, Natchez, Baton Rouge, and New Orleans.

No segregation of the carriers into classes will be undertaken, but we think that the needs of lines of unmistakable financial weakness should be provided for. An addition of 15 per cent, which we deem reasonable, to the rates adopted for the standard lines should be accorded to the Louisiana & Arkansas Railway and the Louisiana & North West Railroad. In figuring joint rates between standard lines and the lines authorized to charge higher rates, herein designated differential lines, there should be applied the standard single-line scale for the total distance plus the joint line differential. To the rate so arrived at there should be added 15 per cent of the straight mileage prorate of the differential line.

This method of figuring joint rates between standard lines and differential lines may be illustrated by the following example: Assume the total length of a haul to be 120 miles, made up of 100 miles over a standard line and 20 miles over a differential line. The standard single-line scale for 120 miles plus the joint-line differential gives the rate which would be applicable for corresponding distances over two standard lines. To this rate should be added  $20/120$  of 15 per cent of said rate, or, in general, that portion of 15 per cent of the standard joint-line rate which the mileage over the differential line is of the total length of the haul.

With the exception of certain purely statistical data no evidence was presented treating specifically of the conditions of other roads seeking class B classification; hence at this time the additional amount designated is herein approved only for the two carriers named.

Elsewhere herein we express our views concerning commodity rates. The carriers may within 90 days from the date of service of the order herein present for our consideration and for the consideration of all interested parties a commodity rate adjustment in conformity with these views.

#### FOURTH SECTION.

As stated in opening, portions of certain fourth section applications were heard with these cases. More comprehensive hearings of said applications are under way in connection with the rehearing of the

*City of Memphis Case*, 43 I. C. C. 121, and Docket No. 7304, pending; and we will reserve determination of the fourth section applications here involved until the further hearings have been concluded.

**MEYER, Commissioner:**

The foregoing is based upon the tentative report proposed by the examiner and served upon the parties.

Since the argument on that report, federal control has been instituted and the Director General of Railroads has, through his General Order No. 28, effective June 25, 1918, increased by 25 per cent the class rates in issue in these proceedings. Furthermore, under instructions from the Director General and with our permission the carriers have cancelled, effective August 1, 1918, all of the schedules which were under suspension in Investigation and Suspension Docket No. 1000.

Section 10 of the federal control act provides for the determination upon complaint and hearing of the justness and reasonableness of rates initiated by the Director General. By supplemental complaint in dockets Nos. 8845, 8920, and 9036 the Natchez Chamber of Commerce has joined the Director General as a party defendant and has put in issue the increased rates to and from Natchez and their relation to the increased rates (1) between points in Louisiana on and west of the Mississippi River, which include Baton Rouge and New Orleans and which are hereinafter referred to as western Louisiana points, and (2) between western Louisiana points and southern Arkansas points. Answer in due form has been filed by the Director General, and both parties having waived further hearing the increased rates stand for our determination. Also in the *Memphis Freight Bureau Case*, in accordance with a motion filed by the complainant, we amended the complaint so as to bring in the Director General as a defendant, and consequently the increased rates to and from Memphis are also before us. No amended complaint has been filed in docket No. 7250.

A careful analysis of the rates established on June 25, 1918, shows that under the increased rates Natchez is laboring under greater prejudice than that found to have existed at the time the original complaints were brought and confirms our view that a uniform distance scale should be applied (1) between the Mississippi River crossings, Memphis to New Orleans, inclusive, and western Louisiana and southern Arkansas points, (2) between western Louisiana points, and (3) between western Louisiana points and southern Arkansas points. In carrying out the Director General's Order No. 28 the same percentage of increase was added to all of the class rates,

52 I. C. C.

thereby enlarging the spread which previously existed between the rates to and from Natchez and those applicable (1) between western Louisiana points and (2) between western Louisiana points and southern Arkansas points.

Since the promulgation of that order the Director General has suggested for general adoption, over an extensive territory, including Louisiana and northern Arkansas, a scale of class rates which, on the whole, is slightly lower than the Shreveport scale increased by 25 per cent. The present record is insufficient for a determination of the reasonableness of this scale. The application of the same scale (1) between Mississippi River crossings, Memphis to New Orleans, inclusive, and western Louisiana and southern Arkansas points, (2) between western Louisiana points, and (3) between western Louisiana points and points in southern Arkansas, with additions for two-line hauls, for bridge tolls at Memphis, and river transfer at Natchez, Vicksburg, Baton Rouge, and New Orleans, and for transportation on the Louisiana & Arkansas Railway and the Louisiana & North West Railroad, as referred to in the examiner's report, would remove the undue prejudices existing under the rates now in effect.

Had we been able to dispose of these cases prior to the effectiveness of the Director General's Order No. 28, which increased rates throughout the country as a war measure, we should, upon the record then before us, have been warranted in prescribing as reasonable maximum class rates the Shreveport scale, reproduced in Appendix No. 1, for application throughout the territory above described. However, the certificate of the President as to the need of increasing the carrier's operating revenue is in the record; it is not contradicted or challenged, and the reports of defendant carriers on file with us indicate that higher rates than those applicable under that scale are now reasonably necessary to provide revenues adequate to meet higher wage scales, increased operating expenses generally, higher prices of materials, and other burdens growing out of the war. In view of this fact it would not be just to prescribe the Shreveport scale at this time. It is our determination that the class rates assailed are and for the future will be unjust, unreasonable, and unduly prejudicial to the extent that they exceed the Shreveport scale by more than 25 per cent, except as stated in the following paragraph.

In order to correct and prevent undue prejudice against any of these lower Mississippi River crossings an order will be entered requiring the defendants to establish a distance scale of class rates not exceeding the Shreveport scale by more than 25 per cent, except that differential lines may charge more as provided elsewhere herein, between Mississippi River crossings, Memphis to New Orleans, inclusive, and western Louisiana and southern Arkansas

points which shall not exceed the rates contemporaneously applied on like traffic for like distances (1) between western Louisiana points and (2) between western Louisiana points and southern Arkansas points, with the addition of charges for bridge toll and river transfers hereinbefore mentioned, rates from Memphis to southern Arkansas and the Memphis bridge tolls herein authorized to be subject to revision, if shown to be appropriate, as the result of the findings in the *City of Memphis Case, supra*.

HALL, *Commissioner*, dissenting:

I find myself not in accord with the views expressed and the conclusions reached in the majority report, but as most of the differences relate to exercise of that administrative judgment which is vested in the Commission it seems unnecessary to set them forth in detail.

52 I. C. C.

## APPENDIXES.

## APPENDIX No. 1.

[Class rate scales approved by the Interstate Commerce Commission in cited cases.]

(1) *Southwestern Class Case 48, I. C. C. 379, and Railroad Commission of Louisiana v. A. H. T. Ry. Co., 48 I. C. C., 312.*

	1	2	3	4	5	A	B	C	D	E
10 or less.....	23	19	16	14	10	10	8	7	6	5
Over 10 not over 15.....	25	21	17.5	15	11	12	9	8	7	6
Over 15 not over 20.....	27	23	19	16	12	13	10	9	8	6
Over 20 not over 25.....	29	25	20	17	14	15	11.5	10	8.5	7
Over 25 not over 30.....	30.5	26	21	18	15	16	12	11	9	7.5
Over 30 not over 35.....	32	27	22	19	15.5	16.5	13	11	9.5	8
Over 35 not over 40.....	33.5	28.5	23.5	20	16	17	13.5	11.5	10	8.5
Over 40 not over 45.....	35	29.5	24.5	21	17	18	14	12	10.5	9
Over 45 not over 50.....	36.5	31	25.5	22	17.5	18.5	14.5	12.5	11	9
Over 50 not over 55.....	38	32	26.5	23	18	19	15	13	11.5	9.5
Over 55 not over 60.....	39.5	33.5	27.5	24	19	20.5	16	13.5	12	10
Over 60 not over 65.....	41	35	28.5	24.5	19.5	21	16.5	14	12.5	10
Over 65 not over 70.....	42.5	36	29.5	25.5	20	22	17	14.5	13	10.5
Over 70 not over 75.....	44	37.5	31	26.5	21	23	17.5	15.5	13	11
Over 75 not over 80.....	45.5	38.5	32	27.5	22	23.5	18	16	13.5	11.5
Over 80 not over 85.....	47	40	33	28	22.5	24.5	19	16.5	14	12
Over 85 not over 90.....	48.5	41	34	29	23	25	19.5	17	14.5	12
Over 90 not over 95.....	50	42.5	35	30	24	26	20	17.5	15	12.5
Over 95 not over 100.....	51.5	43.5	36	31	24.5	27	20.5	18	15.5	13
Over 100 not over 105.....	53	45	37	32	25.5	27.5	21	18.5	16	13
Over 105 not over 110.....	54.5	46	38	32.5	26	28	22	19	16.5	13.5
Over 110 not over 115.....	56	47.5	39	33.5	27	29	22.5	19.5	17	14
Over 115 not over 120.....	57.5	48.5	40	34.5	27.5	30	23	20	17	14
Over 120 not over 125.....	59	50	41	35.5	28.5	30.5	23.5	20.5	17.5	15
Over 125 not over 130.....	60.5	51.5	42.5	36.5	29	31.5	24	21	18	15
Over 130 not over 135.....	62	53	43.5	37	30	32	25	21.5	18.5	15.5
Over 135 not over 140.....	63.5	54	44.5	38	30.5	33	25.5	22	19	16
Over 140 not over 145.....	65	55	45.5	39	31	34	26	22.5	19.5	16
Over 145 not over 150.....	66.5	56.5	46.5	40	32	35	26.5	23	20	16.5
Over 150 not over 160.....	69	58.5	48	41.5	33	36	27.5	24	20.5	17
Over 160 not over 170.....	71	60	49.5	42.5	34	37	28.5	24.5	21.5	17.5
Over 170 not over 180.....	73	62	51	44	35	38	29	25.5	22	18
Over 180 not over 190.....	75	64	52.5	45	36	39	30	26	22.5	18.5
Over 190 not over 200.....	77	65.5	54	46	37	40	31	27	23	19
Over 200 not over 210.....	79	67	55.5	47.5	38	41	31.5	28	23.5	19.5
Over 210 not over 220.....	81	68.5	56.5	48.5	39	42	32.5	28.5	24.5	20
Over 220 not over 230.....	83	70.5	58	50	40	43	33	29	25	20.5
Over 230 not over 240.....	85	72	59.5	51	41	44	34	30	25.5	21
Over 240 not over 250.....	87	74	61	52	42	45	35	30.5	26	21.5
Over 250 not over 275.....	89.5	76	63	53.5	43	46	36	31.5	27	22.5
Over 275 not over 300.....	92	78	64.5	55	44	48	37	32	27.5	23
Over 300 not over 325.....	94.5	80	66	56.5	45	49	38	33	28.5	23.5
Over 325 not over 350.....	97	82.5	68	58	46.5	50.5	39	34	29	24
Over 350 not over 375.....	99.5	84.5	69.5	59.5	48	52	40	35	30	25
Over 375 not over 400.....	102	86.5	71	61	49	53	41	35.5	30.5	25.5
Over 400 not over 425.....	104.5	88.5	73	63	50	54	42	36.5	31	26
Over 425 not over 450.....	107	91	75	64	51.5	55.5	43	37.5	32	26.5
Over 450 not over 475.....	109.5	93	77	66	52.5	57	44	38.5	33	27
Over 475 not over 500.....	112	95	78	67	54	58	45	39	33.5	28
Over 500.....	112	95	78	67	54	58	45	39	33.5	28

NOTE 1.—The above scale of rates should apply to traffic moving over a single line of railroad or over two or more lines that are under the same management and control.

NOTE 2.—The rates applied on shipments over two or more lines of railroad not under the same management and control should exceed the rates shown above by not more than—

1	2	3	4	5	A	B	C	D	E
8	7	6	5	4	4	4	3	2	2

but in no case should exceed the following to points in common-point territory for distances of 500 miles or less:

1	2	3	4	5	A	B	C	D	E
112	95	78	67	54	58	45	39	33.5	28



(2) *New Orleans-Texas rates, 38 I. C. C., 1.*

Classes.....	1	2	3	4	5	A	B	C	D	E
New Orleans to Houston (363 miles).....	89	78	67	57	45	46	42	35	27	25

(3) *Corporation Commission of New Mexico v. Ry. Co., 34 I. C. C., 292.*

Classes.....	1	2	3	4	5	A	B	C	D	E
St. Louis to El Paso.....	159	138	122	116	86	89	81	63	51	44

(4) *Railroad Commission of Texas v. A., T. & S. F. Ry. Co., 20 I. C. C., 463.*

Classes.....	1	2	3	4	5	A	B	C	D	E
St. Louis to Texas common points.....	147	125	104	96	75	79	70	58	46	39

(5) *The Missouri River-Nebraska Cases, 40 I. C. C., 201.*

	1	2	3	4	5	6	A	B	C	D
1 to 5 miles.....	23.0	19.5	16.1	13.8	10.3	11.5	8.0	6.9	5.7	3.9
6 to 10 miles.....	24.0	20.4	16.8	14.4	10.8	12.0	8.4	7.2	6.0	4.1
11 to 15 miles.....	25.0	21.2	17.5	15.0	11.2	12.5	8.7	7.5	6.2	4.2
16 to 20 miles.....	26.0	22.1	18.2	15.6	11.7	13.0	9.1	7.8	6.5	4.4
21 to 25 miles.....	27.0	22.9	18.9	16.2	12.1	13.5	9.4	8.1	6.7	4.6
26 to 30 miles.....	28.0	23.8	19.6	16.8	12.6	14.0	9.8	8.7	7.0	4.8
31 to 35 miles.....	29.0	24.6	20.3	17.4	13.0	14.5	10.1	8.7	7.2	4.9
36 to 40 miles.....	30.0	25.5	21.0	18.0	13.5	15.0	10.5	9.0	7.5	5.1
41 to 45 miles.....	31.0	26.3	21.7	18.6	13.9	15.5	10.8	9.2	7.7	5.3
46 to 50 miles.....	32.0	27.2	22.4	19.2	14.4	16.0	11.2	9.6	8.0	5.4
51 to 100 miles.....	42.0	35.7	29.4	25.2	18.9	21.0	14.7	12.6	10.5	7.1
191 to 200 miles.....	62.0	52.7	43.4	37.2	27.9	31.0	21.7	18.6	15.5	10.5
281 to 300 miles.....	77.0	65.4	53.9	46.2	34.6	38.5	26.9	23.1	19.2	13.1
381 to 400 miles.....	92.0	78.2	64.4	55.2	41.4	46.0	32.2	27.6	23.0	15.9

(6) *City of Memphis v. C., R. I. & P. Ry. Co., 43 I. C. C., 121.*

	1	2	3	4	5	A	B	C	D	E
1 to 5 miles.....	22	18.9	15.6	12.4	9.8	10.1	7.9	6.7	5.7	4.7
6 to 10 miles.....	24	20.6	17	13.5	10.5	11.0	8.6	7.3	6.2	5.2
11 to 15 miles.....	25	22.4	18.5	14.7	11.4	11.9	9.4	7.8	6.8	5.6
16 to 20 miles.....	29	24.9	20.6	16.4	12.8	13.3	10.4	8.8	7.5	6.2
21 to 25 miles.....	32	27.5	22.7	18.1	14.1	14.7	11.5	9.8	8.3	6.9
26 to 30 miles.....	34	29.2	24.2	19.2	15.0	15.6	12.2	10.4	8.8	7.3
31 to 35 miles.....	36	31	25.6	20.3	15.8	16.5	13	11	9.4	7.4
36 to 40 miles.....	38	32.6	27	21.4	16.7	17.5	13.7	11.6	9.9	8.2
41 to 45 miles.....	40	34.4	28.4	22.6	17.6	18.4	14.4	12.2	10.4	8.6
46 to 50 miles.....	42	36.1	29.8	23.7	18.5	19.3	15.1	12.8	10.9	9
51 to 100 miles.....	60	51.6	42.6	33.9	26.4	27.6	21.6	18.3	15.6	12.9
196 to 200 miles.....	81	69	57	45.7	35.6	37.2	29.2	24.7	21.1	17.4
276 to 300 miles.....	105	89	74	59.4	46.3	48.4	37.8	32	27.3	22.6

(7) *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co., 39 I. C. C., 224.*

	1	2	3	4	5	A	B	C	D	E
200 miles.....	81	69	57	49	41	42	32	28	24	20
300 miles.....	105	89	74	63	53	44	42	37	32	26
400 miles.....	129	102	84	72	60	62	48	42	36	30

## APPENDIX No. 2.

Comparison of class rates from Natchez, Miss., and other points to stations in Louisiana and Arkansas.

Stations.	Distance.	1	2	3	4	5	A	B	C	D	E
<b>To Waterproof from—</b>											
New Orleans.....	215	52	45	37	29	19	21	17	16	14	12
Little Rock.....	239	86	72	63	54	45	47	40	30	25	20
Shreveport.....	174	95.1	77	65.2	49.8	39.1	43	34.4	28.7	25.5	22.7
Natchez.....	29	40	33	26	21	18	19	16	13	11	10
<b>To Oak Grove from—</b>											
New Orleans.....	334	85	75	67	61	49	45	43	40	36	29
Little Rock.....	158	72	62	55	46	42	42	39	30	23	17.5
Shreveport.....	188										
Natchez.....	139	70	55	48	40	33	34	27	23	20	17
<b>Average:</b>											
New Orleans.....	281	61	53.5	37.5	36.1	26.6	27.8	24.8	21.5	19.5	12.2
Little Rock.....	184	78.9	72	58.8	50.5	43.5	44.6	39.6	28.7	24	19.1
Shreveport.....	145	87.8	72	50.5	49.3	36	38	30.8	26.5	25	21.9
Natchez.....	72	48.5	32.2	32.4	26.3	22.3	23.5	19	16	13	12.2
<b>To Bonita from—</b>											
Little Rock.....	153	70	61	55	46	40	42	35	26	23	17.5
Natchez.....	112	110	92	79	62	48	51	43	38		
New Orleans.....	320	110	92	79	62	48	51	43	38		
<b>To Rochelle from—</b>											
Little Rock.....	251	86	72	63	54	45	47	40	30	25	20
Natchez.....	60	85	70	59	45	35	38	32	30	27.5	25
New Orleans.....	222	85	70	59	45	35	38	32	30	27.5	25
<b>To Gretna from—</b>											
New Orleans.....	2	25	18	15	10	10	10	8	7	6	5
Shreveport.....	324	85	68	55	40	32	35	28	24	22	20
Natchez.....	210	75	58	50	37	33	22	29	21	18	.....
<b>To Provencal from—</b>											
New Orleans.....	245	80	68	57	45	36	39	32	28	26	24
Shreveport.....	81	42	40	39	38	34	34	31	29	25	17
Natchez.....	156	102	90	79	68	56	59	51	46	41	32
<b>To Gloster from—</b>											
New Orleans.....	301	80	68	57	45	36	39	32	28	25	23
Shreveport.....	25	28	26	25	24	21	21	18	16	14	10
Natchez.....	212	88	76	65	54	43	46	38	33	30	25
<b>To Cheneyville from—</b>											
New Orleans.....	169	60	50	45	35	28	28	27	26	25	24
Shreveport.....	157	75	69	61	50	40	40	38	34	25	18
Natchez.....	130	110	90	80	52	51	40	48	40	37	.....
<b>To Port Allen from—</b>											
New Orleans.....	97	25	22	20	15	15	15	12	10	8	8
Shreveport.....	245	85	72	60	45	37	40	32	27	24	23
Natchez.....	115	70	58	52	41	38	39	34	30	27	21
<b>To Morgan City from—</b>											
New Orleans.....	80	34	30	27	20	18	17	15	14	13	12
Shreveport.....	271	60	50	40	30	22	25	20	17	16	15
Natchez.....	229	89	79	65	50	43	31	39	31	24	.....
<b>To Jonesboro from—</b>											
New Orleans.....	252	85	75	65	55	35	38	32	30	27.5	25
Shreveport.....	87	43	40	37	34	26	27	23	22	20	17
Natchez.....	111	103	90	77	64	48	52	43	39	36	32
<b>Average:</b>											
New Orleans.....	274	83.1	73.1	63.1	52.7	34.1	45.6	31.1	29	67.7	24
Shreveport.....	89	46	42	38	34.3	26.6	26.7	23.3	22.1	24.5	17.5
Natchez.....	131	102.4	88	75.5	61.6	55.6	49.7	42	37.8	35	31.1
<b>To McGhee from—</b>											
New Orleans.....	353	85	75	65	49	37	39	39	27	23	18
Little Rock.....	101	48	41	33	26	19	21.5	17	14.5	12	9.5
Natchez.....	167	85	75	65	49	37	39	32	27	23	18
<b>To Pine Bluff from—</b>											
New Orleans.....	412	100	85	65	49	37	39	32	27	23	18
Little Rock.....	42	34	29	24	18	13.5	15.5	12	10	8.5	7
Natchez.....	226	100	85	65	49	37	39	32	27	23	18
<b>To Camden from—</b>											
New Orleans.....	381	115	100	80	62	46	49	41	35	29	24
Little Rock.....	126	52	44	36	28	21	23.5	18	15.5	13	10.5
Natchez.....	185	115	100	80	62	46	49	41	35	29	24
<b>Average:</b>											
New Orleans.....	365	98.5	85	72.7	55.5	40.4	40.8	36.2	30.4	26.2	20.6
Little Rock.....	119	50.7	42.3	34.7	27.4	20.2	22.2	17.4	14.7	12.4	10.1
Natchez.....	173	98.5	85	72.7	55.5	40.4	40.8	36.2	30.4	26.2	20.6
<b>To Arkansas City from—</b>											
St. Louis.....	420	100	85	65	49	37	39	32	27	23	21
Memphis.....	158	60	50	40	30	22	25	20	17	16	15
Natchez.....	170	70	60	50	40	27	30	27	24	22	18

*Comparison of class rates from Natchez, Miss., and other points to stations in Louisiana and Arkansas—Continued.*

Stations.	Distance.	1	2	3	4	5	A	B	C	D	E
To Ruston from—											
New Orleans.....	275	70	60	50	40	27	30	25	22	21	20
Shreveport.....	65	43	38	32	25	21	23	19	17	16	15
Natchez.....	130	59	77	64	53	45	48	41	46	33	31
To Monroe from—											
New Orleans.....	281	60	50	40	30	22	25	20	17	16	15
Shreveport.....	97	60	50	40	30	22	25	20	17	16	15
Natchez.....	107	60	50	40	30	22	25	20	17	16	15
Average:											
New Orleans.....	278	62.7	51.3	46.8	34.7	23.6	23	21.6	19.2	18.5	16.7
Shreveport.....	97	65	51.3	48.2	37.1	26.7	33.5	29.4	27.2	27	25.5
Natchez.....	115	82.6	81	73.6	46.6	33.3	40.2	33.7	30	26.7	
To Arkansas City from—											
New Orleans.....	356	70	60	50	40	27	30	27	24	22	18
Little Rock.....	112	50	42	35	27	20	22.5	17.5	15	12.5	10
Natchez.....	169	70	60	50	40	27	30	27	24	22	18
To Eudora from—											
New Orleans.....	315	70	60	50	40	27	30	27	24	22	18
Little Rock.....	139	54	46	38	29	21.5	24.5	19	16	13.5	11
Natchez.....	128	70	60	50	40	27	30	27	24	22	18
To Montrose from—											
New Orleans.....	330	103	89	74	56	44	42	36	33	27	22
Little Rock.....	124	52	44	36	28	21	23.5	18	15.5	13	10.5
Natchez.....	144	103	89	74	56	44	42	36	33	27	22
To Crossett from—											
New Orleans.....	363	108	89	75	58	46	49	41	34	29	24
Little Rock.....	155	58	49	40	32	23	26	20.5	17.5	14.5	11.5
Natchez.....	175	108	89	75	58	46	49	41	34	29	24
To Mermentau from—											
New Orleans.....	180	51	42	37	28	24	22	21	20	18	16
Shreveport.....	222	60	50	40	30	24	25	21	20	18	16
Natchez.....	199	98	92	82	67	56	49	49	45	32	.....
To Lake Charles from—											
New Orleans.....	218	35	35	35	30	20	20	20	20	20	20
Shreveport.....	184	40	38	30	25	20	21	19	18	16	15
Natchez.....	205	106	84	76	58	48	39	42	34	30	.....
To Thibodaux from—											
New Orleans.....	58	30	27	25	20	16	16	14	13	11	10
Shreveport.....	289	65	55	45	35	24.5	27.5	22.5	19.5	18.5	17.5
Natchez.....	174	80	67	62	47	39	32	35	27	23	.....
Average:											
New Orleans.....	146	44.9	38.2	34.5	26.8	22.1	21	19.7	18.7	17.4	16
Shreveport.....	224	59.4	51.2	41.9	32.1	24.2	26	22.1	19.8	18	16.3
Natchez.....	201	94.1	85.2	74.3	60.6	50.4	41.8	44.7	38.7	31.8	.....
To Vidalia from—											
New Orleans.....	208	50	40	35	27	23	12	21	14	12	.....
Shreveport.....	186	60	50	40	30	22	25	20	17	16	15
Natchez.....	3	30	25	18	16	12	15	10	9	7	7
To Stevenson from—											
New Orleans.....	297	102	87	74	60	45	48	40	34	28	21
Shreveport.....	161	99.9	82.4	69.7	53.4	40.9	45.7	37.1	30.5	27.2	21
Natchez.....	106	68	59	53	47	34	35	32	24	19	18
To Alexandria from—											
New Orleans.....	183	60	50	40	30	22	25	20	17	16	15
Shreveport.....	122	60	50	40	30	22	25	20	17	16	15
Natchez.....	105	85	70	59	45	35	38	32	29	27.5	25
To Lake Charles from—											
New Orleans.....	218	40	38	30	25	20	21	19	18	16	15
Shreveport.....	184	40	38	30	25	20	21	19	18	16	15
Natchez.....	204	90	78	65	52	43	33	40	32	28	.....
To Springhill from—											
New Orleans.....	330	85	75	65	55	40	41	38	32	27.5	25
Shreveport.....	60	50	44	39	34	26	28	25	21	19	13
Natchez.....	188	85	75	65	55	40	41	38	32	27.5	25
To Trout from—											
New Orleans.....	234	80	70	60	45	34	30	30	27	26	20
Shreveport.....	135	65	57	49	43	35	37	30	29	27	24
Natchez.....	52	80	70	60	45	34	30	30	27	26	20

The averages shown are the average distances and rates from and to all of the stations shown in exhibits from which the above illustrations are extracted, and are not merely the averages of the few stations here included.

## APPENDIX No. 3.

*Operation of steamboats and other water craft in Louisiana for the year ended June 30, 1915.*

Name of boat or operating company.	Number of trips during year.	Kind of craft.	Miles operated.	Tonnage.	Waters navigated.
Betsy Ann.....	156	Steam.....	130	295	Mississippi River.
Bradford Transportation Co.:					
Terrebonne.....	52	.....do.....	183	99	Bayou Teche.
Houma.....	104	.....do.....	80	105	Bayous and lakes.
Crescent.....	44	Gasoline.....	41	14	Mississippi River and Bayou Lafourche.
J. B. Chaffe.....	72	Steam.....	35	38	Bayou Vermillion.
Clipper.....	30	.....do.....	450	78	Mississippi River and tributaries.
Harry.....		.....do.....	60	34	Bayou Terrebonne and tributaries.
Laura.....		.....do.....	60	35	Do.
Restless.....		Gasoline.....		9	Do.
Jodie.....	52	Steam.....	45	60	Bogue Falaya and Tchafuncta River.
Borealis Rex.....	156	.....do.....	60	89	Calcasieu River.
Louisiana Steamboat & Ferry Co.:					
Hanover.....	520	.....do.....	22	467	Lake Pontchartrain and rivers.
New Camelia.....	240	.....do.....	32	270	Tchafuncta River.
Monroe.....	30	.....do.....	500	299	Mississippi River and tributaries.
America.....	18	.....do.....	500	399	Mississippi River.
Paul.....	102	Gasoline.....	70	90	Do.
Cordill.....		Steam.....			
Ben Hur.....		.....do.....			
Percy Swain.....		.....do.....			
Uncle Oliver.....		.....do.....			Do.
El Rito.....	90	Gasoline.....	114	43	Do.
Dependent.....	65	.....do.....	110	25	Do.
G. H. A. Thomas.....	38	Steam.....	65	45	Lake Pontchartrain and rivers.
Tom.....	100	Gasoline.....	75	35	Mississippi River.
Welcome.....	41	.....do.....	100	9	Ouachita River.

*Comparison of distances via water routes from New Orleans, and Natchez, to various points on Mississippi River, Atchafalaya River, Red River, Ouachita River, Black River, Bayou Teche, and other navigable streams in Louisiana.*

To—	Distance from New Orleans.	Distance from Natchez.
<b>Mississippi River points:</b>		
New Orleans, La.....		265
Donaldsonville, La.....	80	185
Plaquemine, La.....	112	183
Baton Rouge, La.....	133	132
Bayou Sara, La.....	166	99
Mouth of Old River (Atchafalaya and Red).....	202	63
Natchez, Miss.....	265	
Lake Providence, La.....	423	188
<b>Atchafalaya River points:</b>		
Melville, La.....	239	100
Morgan City, La. <sup>1</sup> .....	176	193
Morgan City, La. <sup>2</sup> .....	106	
<b>Bayou Teche:</b>		
Mouth of Bayou Teche.....	182	187
Patterson, La.....	184	201
Franklin, La.....	202	219
Baldwin, La.....	215	232
Jeanerette, La.....	229	246
New Iberia, La.....	240	257
St. Martinsville, La.....	262	279
Breaux Bridge, La.....	277	294
<b>Bayou Grosse Tete:</b>		
Grosse Tete, La.....	135	178
Marionville, La.....	144	185
<b>Bayou des Glaises, Bayou Rouge and Bouef:</b>		
Simmesport, La.....	214	75
Rexmore, La.....	249	110
Bordelonville, La.....	244	106
Morceauville, La.....	252	113
Cotton Port, La.....	264	125
Evergreen, La.....	278	140
Bunkie, La.....	284	145
<b>Red River:</b>		
Alexandria, La.....	320	181
Boyce, La.....	339	210
Coifax, La.....	356	227
Montgomery, La.....	374	245
Shreveport, La.....	509	370
<b>Black and Ouachita rivers:</b>		
Jonesville, La.....	294	185
Harrisonburg, La.....	310	171
Columbia, La.....	362	223
Riverton, La.....	369	230
Monroe, La.....	420	281
Camden, Ark.....	588	449

<sup>1</sup> Via Plaquemine and Grand River, usual route.

<sup>2</sup> Via Harveys Canal, available only for light draft.

## APPENDIX No. 4.

## PROPOSED FORMULA FOR CONSTRUCTING COMMODITY RATES.

In determining the commodity differentials to be applied from Memphis under St. Louis, Vicksburg under or over Memphis, and New Orleans and Baton Rouge over Vicksburg or Memphis.

Take the percentage the commodity rate from St. Louis is of the class rate to which the commodity belongs, either in the western classification or in the classification exceptions (see note), then apply that percentage to the class differences Memphis under St. Louis.

EXAMPLE.—If the commodity in question takes fifth-class rates in the classification, determine the percentage such commodity rate from St. Louis is of the fifth-class rate from St. Louis, and then take that percentage of the fifth-class differential prescribed by the Commission, Memphis under St. Louis. Rates from crossings south of Memphis to be determined in the same manner.

NOTE.—Where the western classification or classification exceptions do not authorize a class basis on a particular commodity description, the class rate to be used in determining the differentials will be that which applies on the most important or majority of the articles.

*Class rates and differences.*

To Texarkana group from—	1	2	3	4	5	A	B	C	D	E
St. Louis territory.....	125	106	88	75	63	66	50	44	38	31
Memphis territory.....	105	89	74	63	53	55	42	37	32	26
Character (1) differences.....	20	17	14	12	10	11	8	7	6	5
Vicksburg.....	115	98	81	69	58	61	46	41	35	29
Natchez.....										
Baton Rouge.....										
New Orleans.....										
Character (2) differences.....	10	9	7	6	5	6	4	4	3	3

Character (1) class differences under base point—St. Louis territory.

Character (2) class differences over base point—Memphis territory.

52 I. C. C.

## APPENDIX No. 5.

Statement showing Mississippi River crossing charges proposed by carriers to apply at Natchez, on hauls of various distances, as compared with bridge tolls suggested by carriers to apply on Memphis traffic for same distance into Arkansas in Docket 7304.

	Dis- tance.	1	2	3	4	5	A	B	C	D	E
From Natches to Vidalia.....	8	<sup>1</sup> 11 3 3	10	7	7	5	5	4	4	3	3
Natches per cent higher.....		266	233	133	250	150	150	166	166	100	100
From Natches to Ferriday.....	12	<sup>1</sup> 9 3 3	8	6	5	4	4	4	3	3	2
Natches per cent higher.....		200	166	100	150	100	100	106	100	100	25
From Natches to Clayton.....	18	<sup>1</sup> 8 3 3	7	5	5	4	4	3	3	3	2
Natches per cent higher.....		166	133	150	150	100	100	100	100	100	25
From Natches to Copeland.....	26	<sup>1</sup> 8 3 3	7	5	5	4	4	3	3	3	2
Natches per cent higher.....		166	133	150	150	100	100	100	100	100	25
From Natches to Sicily Island....	31	<sup>1</sup> 8 3 3	7	6	5	4	4	3	3	2	2
Natches per cent higher.....		166	133	100	150	100	100	100	100	33	33
From Natches to Peck.....	36	<sup>1</sup> 8 3 3	7	6	5	4	4	3	3	2	2
Natches per cent higher.....		166	133	100	150	100	100	100	100	33	33
From Natches to Wisner.....	40	<sup>1</sup> 8 3 3	7	6	5	4	4	3	3	2	2
Natches per cent higher.....		166	133	100	150	100	100	100	100	33	33
From Natches to Gilbert.....	43	<sup>1</sup> 8 3 3	7	5	4	4	4	3	3	3	2
Natches per cent higher.....		166	133	150	100	100	100	100	100	100	25
From Natches to Winnsboro.....	54	<sup>1</sup> 6 3 3	5	4	3	3	3	3	3	2	2
Natches per cent higher.....		100	150	33	50	50	50	100	25	33	33
From Natches to Baskin.....	61	<sup>1</sup> 4 3 3	4	3	2	2	2	1	2	1	1
Natches per cent higher.....		33	33	3	2	2	2	1½	1½	1½	1½
From Natches to Mangham.....	65	<sup>1</sup> 4 3 3	4	3	2	2	2	1	2	1	1
Natches per cent higher.....		33	33	3	2	2	2	1½	1½	1½	1½
From Natches to Rayville.....	77	<sup>1</sup> 4 3 3	3	3	3	2	2	1	1	1	1
Natches per cent higher.....		33	33	3	2	2	2	1½	1½	1½	1½
From Natches to Oak Ridge.....	87	<sup>1</sup> 6 3 3	5	4	3	3	3	3	3	2	2
Natches per cent higher.....		100	150	33	50	50	50	100	33	33	33

<sup>1</sup> Cost of crossing at Natches.

<sup>2</sup> Bridge tolls at Memphis

52 I. C. C.

## APPENDIX No. 6.

Comparison of statistics taken from Statistics of Railways in the United States for the fiscal year ended June 30, 1915.

	L. & A. Ry.	C. R. I. & P. Ry.	St. L., I. M. & S. Ry.	St. L. S. W. Ry.	K. C. S. Ry.
Freight-train miles per mile of road.....	1,218	2,002	1,668	1,255	2,454
Loaded freight-car miles per freight-train mile.....	17.47	20.02	27.94	28.69	28.27
Empty freight-car miles per freight-train mile.....	10.12	8.56	11.65	12.22	9.93
Ton-miles, revenue freight per freight-train mile.....	366.87	321.70	474.96	413.63	538.14
Freight revenue per freight-train mile.....	\$3.30	\$3.77	\$3.49	\$3.96	\$3.69
Revenue ton-miles per loaded car-mile.....	22.60	16.66	18.83	16.23	21.67
Freight revenue per loaded car-mile.....	0.23380	0.14361	0.13831	0.15551	0.14841
Average haul revenue freight.....	88.01	238.27	238.49	270.00	287.81
Revenue per ton of freight <sup>1</sup> .....	\$0.91	\$2.05	\$1.75	\$2.59	\$1.97
Revenue per ton per mile.....	0.01035	0.00862	0.00734	0.00958	0.00685
Tons carried 1 mile per mile of road.....	494,890	671,713	908,319	591,859	1,349,333

<sup>1</sup> Nearest figure, using two decimals.

Comparative statement of passenger, freight, gross, and net revenue per mile of road and ratios of operating expenses and taxes for the Louisiana & Arkansas Railway with the class A Louisiana roads shown for the fiscal year ended June 30, 1915.

Name of road.	Passenger- train revenue.	Freight revenue.	Gross operating revenue.	Operating expense.	Net operating revenue.	Operating ratio (per cent.).	Tax ratio.
L. & A. Ry.....	\$963	\$5,120	\$6,027	\$3,996	\$2,031	66.29	4.90
V., S. & P. Ry.....	3,034	4,641	8,087	7,290	788	90.26	6.39
C., R. I. & P. Ry.....	2,625	5,791	8,663	6,532	2,131	75.41	4.48
T. & P. Ry.....	2,597	6,546	9,439	7,289	2,150	77.22	4.77
St. L., I. M. & S. Ry.....	2,040	6,060	8,882	6,200	2,682	69.81	5.85
St. L. S. W. Ry.....	1,510	5,672	7,823	4,832	2,991	65.98	5.85
K. C. S. Ry.....	2,080	9,242	11,997	7,745	4,252	64.56	5.72
M. L. & T. R. R.....	3,027	7,269	10,819	8,448	2,371	78.08	5.62
L. W. R. R.....	3,667	6,586	10,525	7,397	3,128	70.28	5.71
L. E. & N. Co.....	1,007	4,609	5,772	4,381	1,392	75.88	5.61
H. E. & W. T. Ry.....	1,916	5,084	7,132	5,509	1,623	77.24	4.39
Average all class I and II roads, western district, 1914 <sup>1</sup> .....	2,664	6,233	9,101	6,213	2,887	68.27	.....
L. & A. Ry., 1914 <sup>1</sup> .....	1,122	5,004	6,188	4,134	2,054	68.81	.....

<sup>1</sup> Fiscal year ended June 30, 1914, average not shown in 1915 volume.

	V., S. & P. Ry.	M. L. & T. R. R.	T. & P. Ry.	L. W. R. R.	Average, class I and II all roads in western district, 1914. <sup>1</sup>	L. & A. Ry., 1914. <sup>2</sup>
Freight-train miles per mile of road.....	1,638	1,129	2,621	1,231	( <sup>3</sup> )	( <sup>3</sup> )
Loaded freight-car miles per freight-train mile.....	16.59	26.85	16.85	27.57	( <sup>3</sup> )	( <sup>3</sup> )
Empty freight-car miles per freight-train mile.....	8.00	10.27	7.48	13.74	( <sup>3</sup> )	( <sup>3</sup> )
Ton-miles revenue freight per freight- train mile.....	273.42	403.23	265.62	479.98	384.64	356.23
Freight revenue per freight-train mile.....	\$2.84	\$4.46	\$2.45	\$4.22	\$3.48	\$4.53
Revenue ton-miles per loaded car-mile.....	16.49	19.84	16.15	21.55	( <sup>3</sup> )	( <sup>3</sup> )
Freight revenue per loaded car-mile.....	.17339	.21958	.14915	.13924	( <sup>3</sup> )	( <sup>3</sup> )
Average haul revenue freight.....	98.50	110.61	189.36	65.45	177.20	72.97
Revenue per ton of freight <sup>4</sup> .....	\$1.02	\$1.22	\$1.75	\$0.57	\$1.60	\$0.93
Revenue per ton per mile.....	.01040	.01107	.00923	.00878	.00905	.010127
Tons carried 1 mile per mile of road.....	446,422	650,504	708,833	751,034	689,442	393,802

<sup>1</sup> For the fiscal year ended June 30, 1914, not shown in the 1915 volume.

<sup>2</sup> For the fiscal year ended June 30, 1914.

<sup>3</sup> Not shown.

<sup>4</sup> Nearest figure, using only two decimals.



## APPENDIX No. 7.

*Comparative statement of first class rates proposed by Vicksburg, Shreveport & Pacific Railway to Shreveport triangle and to Texarkana group.*

From—	To groups as shown.	Mileage	Difference in mileage.	Rates.		Difference in rates	
				A	B	A	B
Memphis.....	Shreveport.....	298	12	1.05	1.05	0	0
Do.....	Texarkana.....	286		1.05	1.05		
Do.....	do.....	286	27	1.05	1.05	10	3
New Orleans.....	Shreveport.....	259		1.95	1.02		
Memphis.....	do.....	298	39	1.05	1.05	10	3
New Orleans.....	do.....	259		1.95	1.02		
Do.....	do.....	259	24	1.95	1.02	20	4
Vicksburg.....	Texarkana.....	235		1.15	.98		
Memphis.....	do.....	286	51	1.05	1.05	10	7
Vicksburg.....	do.....	235		1.15	.98		
Memphis.....	Shreveport.....	298	63	1.05	1.05	10	7
Vicksburg.....	Texarkana.....	235		1.15	.98		
New Orleans.....	do.....	375		1.15	1.15		
Memphis.....	Shreveport.....	298	77	1.05	1.05	10	10
New Orleans.....	Texarkana.....	375		1.15	1.15		
Memphis.....	do.....	286	89	1.05	1.05	10	10
Vicksburg.....	do.....	235		1.15	.98		
Do.....	Shreveport.....	140	95	.85	.85	30	13
New Orleans.....	Texarkana.....	375		1.15	1.15		
Do.....	Shreveport.....	259	116	1.95	1.02	20	13
Do.....	do.....	259	119	1.95	1.02	10	17
Vicksburg.....	do.....	140		.85	.85		
New Orleans.....	Texarkana.....	375		1.15	1.15		
Vicksburg.....	do.....	235	140	1.15	.98	0	17
Memphis.....	do.....	286		1.05	1.05		
Vicksburg.....	Shreveport.....	140	146	.85	.85	20	20
Memphis.....	do.....	298		1.05	1.05		
Vicksburg.....	do.....	140	158	.85	.85	20	20

A. Proposed by carriers other than V., S. & P. and as noted.

B. Proposed by V., S. & P.

<sup>1</sup>L. R. & N. Co. proposes 85.

\*Vicksburg higher than New Orleans-Shreveport.

\*Vicksburg higher than Memphis-Texarkana.

\*Vicksburg higher than Memphis-Shreveport.

52 I. C. C.

APPENDIX No. 8.

Illustrations of distance class rates in effect in the state of Louisiana.

Distance (miles).	Railroads.	Classes and rates (rates in cents per 100 pounds).									
		1	2	3	4	5	A	B	C	D	E
5	M. L. & T. R. R.	19	16	15	14	12	13	11	9	8	7
	L. W. R. R.	19	16	15	14	12	13	11	9	8	7
	T. & P. Ry.	20	18	17	16	14	14	12	11	10	9
	K. C. S. Ry.	15	13	11	10	9	9	8	7½	6	5
	St. L. I. M. & S. Ry.	25	20	19	15	13	13	11	9	7½	5½
	N. O. T. & M. Ry.	22	20	18	17	13	14	12	10	8	6
	L. R. & N. Co.	20	17	16	14	10	11	9	7	6	5
	V. S. & P. Ry.	30	25	21	17	14	16	12	10	9	8
	L. & A. Ry.	23	20	19	17	15	15	12	11	9	8
	C. R. I. & P. Ry.	22	20	17	14	11	12	10	8	7	6
15	M. L. & T. R. R.	27	25	23	22	20	21	18	16	14	10
	L. W. R. R.	27	25	23	22	20	21	18	16	14	10
	T. & P. Ry.	28	26	25	24	21	21	18	16	14	10
	K. C. S. Ry.	30	25	23	20	17	17	15	13	11	9
	St. L. I. M. & S. Ry.	39	30	28	22	19	20	16	13	10½	8½
	N. O. T. & M. Ry.	28	26	23	21	17	18	15	13	12	9
	L. R. & N. Co.	28	25	24	22	18	19	17	15	13	8½
	V. S. & P. Ry.	43	38	32	25	21	23	19	17	16	15
	L. & A. Ry.	34	29	24	22	20	20	19	15	13	10
	C. R. I. & P. Ry.	32	30	27	24	21	22	18	17	15	12
50	M. L. & T. R. R.	30	28	27	26	22	23	20	18	16	11
	L. W. R. R.	30	28	27	26	22	23	20	18	16	11
	T. & P. Ry.	30	28	27	26	23	23	20	18	16	11
	K. C. S. Ry.	44	36	33	28	26	26	26	18	16	11
	St. L. I. M. & S. Ry.	52	42	39	32	26	26	25	18	15½	12
	N. O. T. & M. Ry.	30	28	25	23	20	21	18	17	15	12
	L. R. & N. Co.	38	35	34	32	23	24	22	21	18	11
	V. S. & P. Ry.	47	42	36	29	24	26	22	20	19	18
	L. & A. Ry.	46	39	33	30	28	28	26	20	18	12
	C. R. I. & P. Ry.	42	39	35	32	31	33	26	25	23	20
100	M. L. & T. R. R.	49	47	45	40	35	36	33	30	25	16
	L. W. R. R.	49	47	45	40	35	36	33	30	25	16
	T. & P. Ry.	50	49	47	41	36	36	33	30	25	17
	K. C. S. Ry.	64	56	49	44	38	39	35	28	22	16
	St. L. I. M. & S. Ry.	66	56	53	43	38	38	35	28	21½	16
	N. O. T. & M. Ry.	50	47	43	40	33	35	30	27	22	21
	L. R. & N. Co.	58	50	44	42	33	34	27	26	23	16
	V. S. & P. Ry.	63	58	51	42	36	38	34	32	31	30
	L. & A. Ry.	65	58	53	48	42	43	39	31	24	18
	C. R. I. & P. Ry.	61	58	55	52	49	43	37	36	33	30
150	M. L. & T. R. R.	59	57	56	49	39	40	38	34	25	18
	L. W. R. R.	59	57	56	49	39	40	38	34	25	18
	T. & P. Ry.	73	67	59	49	40	40	38	34	25	18
	K. C. S. Ry.	82	71	66	59	45	47	42	36	27	20
	St. L. I. M. & S. Ry.	85	74	61	54	46	48	43	37	27½	20½
	N. O. T. & M. Ry.	70	60	50	40	33	35	30	27	26	25
	L. R. & N. Co.	68	60	54	47	38	39	32	31	28	18½
	V. S. & P. Ry.	76	71	63	51	44	46	42	40	30	38
	L. & A. Ry.	79	72	67	62	47	49	44	39	29	22
	C. R. I. & P. Ry.	75	68	65	62	49	49	44	42	38	31
200	M. L. & T. R. R.	69	65	60	55	46	47	43	35	25	20
	L. W. R. R.	69	65	60	55	46	47	43	35	25	20
	T. & P. Ry.	55	77	67	55	46	48	43	38	28	20
	K. C. S. Ry.	100	86	73	66	50	52	47	43	32	25
	St. L. I. M. & S. Ry.	100	86	69	62	50	52	47	42½	31½	23½
	N. O. T. & M. Ry.										
	L. R. & N. Co.										
	V. S. & P. Ry.										
	L. & A. Ry.	94	87	82	72	51	52	47	42	32	25
	C. R. I. & P. Ry.	88	83	78	69	51	54	49	45	40	33
300	M. L. & T. R. R.										
	L. W. R. R.										
	T. & P. Ry.										
	K. C. S. Ry.	106	96	82	67	54	59	51	46	36	26
	St. L. I. M. & S. Ry.	130	110	89	79	60	62	57	53	42	34
	N. O. T. & M. Ry.	133	112	91	78	61	63	58	53½	42½	31½
	L. R. & N. Co.										
	V. S. & P. Ry.										
	L. & A. Ry.										
	C. R. I. & P. Ry.										

*Illustrations of distance class rates in effect in the state of Louisiana—Continued.*

Dis- tance (miles).	Railroads.	Classes and rates (rates in cents per 100 pounds).									
		1	2	3	4	5	A	B	C	D	E
400	M. L. & T. R. R.....										
	L. W. R. R.....										
	T. & P. Ry.....	150	135	120	103	80	94	77	63	50	40
	K. C. S. Ry.....	147	124	103	89	69	74	66	60	49	39
	St. L., I. M. & S. Ry.....	136	114	93	79	62	64	59	54½	43½	33½
	N. O., T. & M. Ry.....										
	L. R. & N. Co.....										
	V., S. & P. Co.....										
	L. & A. Ry.....										
	C., R. I. & P. Ry.....										

52 I. C. C.

No. 9959.<sup>1</sup>

## LARROWE MILLING COMPANY

v.

CHATHAM, WALLACEBURG & LAKE ERIE RAILROAD  
ET AL.

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Submitted October 1, 1918. Decided January 21, 1919.

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The carload minimum of 40,000 pounds applied by defendants on shipments of dried beet pulp from Wallaceburg, Ontario, to points in the states of New York and New Jersey, during the period from February 18, 1915, to April 1, 1916, held to have been unreasonable in so far as it exceeded 34,000 pounds. Reparation awarded.

*Charles Staff* for complainant.

*D. P. Connell* for Michigan Central Railroad Company.

## REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

*WOOLLEY, Commissioner:*

The complainant is a New York corporation with its principal place of business at Cohocton, N. Y., engaged in the purchase and sale of grain and feed.

By complaint filed November 3, amended on November 22, 1917, and by subcomplaints Nos. 1 and 2, filed on November 10, 1917, it is alleged that the carload minimum applied on shipments of dried beet pulp from Wallaceburg, Ontario, to points in the states of New York and New Jersey during the period from February 18, 1915, to April 1, 1916, was unreasonable, in violation of section 1, and as compared with the minimum of 34,000 pounds applied on like shipments from Bay City, Mich., was unduly prejudicial in violation of section 3. Reparation is asked.

Dried beet pulp is a by-product resulting from the manufacture of beet sugar and, as its name implies, is the beet pulp which has been deprived of its sugar content and subsequently dried. It is a stock food said to be worth, at the time the shipments moved, approximately \$20 per ton at the mill.

Prior to February 18, 1915, the carload minimum applied on shipments of dried beet pulp from Wallaceburg to points in eastern trunk line territory, including the states of New York and New Jersey, was 30,000 pounds. On that date the minimum was increased to 40,000

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<sup>1</sup> This report also embraces No. 9959 (Sub-No. 1 and 2), Same v. Same.

pounds by all lines except the Pere Marquette Railroad, which continued to apply the 30,000-pound minimum. On April 1, 1916, the carload minimum was reduced to 30,000 pounds.

The movement of the commodity is seasonal. During the season that the 40,000-pound minimum was in effect the complainant shipped approximately 80 cars, and about 50 of these, though alleged to have been loaded to full bulk capacity, contained loads weighing considerably less than the minimum required. Although the complainant asked for reparation amounting to the difference between the charges paid on these 50 cars and the charges that would have been paid had a minimum of 30,000 pounds been applied, at the hearing it asserted that it would be satisfied if reparation were awarded on the basis of a minimum of 34,000 pounds. This is the minimum then and now applied on shipments from Bay City, Mich., to points in the same territory of destination.

During the period in which these shipments moved there was a commodity rate applicable to this traffic of 16.8 cents per 100 pounds, minimum weight 40,000 pounds. No complaint is made respecting this rate. The class rate applicable to the traffic was 20½ cents and the carload minimum under the class rate was 30,000 pounds. Under the alternative provisions of the tariff, if the application of the class rate and minimum resulted in lower charges on any shipment than the commodity rate of 16.8 cents and minimum of 40,000 pounds, the class rate should have been applied. This appears to have been done with regard to the greater number of these shipments, but there were a few cars in the list submitted on which the charges were assessed on the basis of the commodity rate and minimum, although the application of the class rate and minimum would have resulted in a lower charge.

It is not seriously contended by the defendants that it is generally practicable or even possible to load as much as 40,000 pounds of this commodity into a car of the ordinary capacity which is furnished for such traffic. The carload minimum applied on shipments from Wallaceburg and Bay City to points in central freight association territory is 30,000 pounds. As heretofore stated, that is the minimum now applied on shipments from Wallaceburg to points in New York and New Jersey, while the minimum applied from Bay City is 34,000 pounds.

The traffic moved via the lines of the Chatham, Wallaceburg & Lake Erie Railroad and the Michigan Central Railroad to Suspension Bridge, N. Y., and thence over the Erie Railroad and other lines to points in the states named. The line of the Chatham, Wallaceburg & Lake Erie Railroad is wholly within the province of Ontario, Canada, and without our jurisdiction. The haul performed by the

52 I. C. C.

Michigan Central Railroad on this traffic is almost entirely without the boundaries of the United States. The extent of our jurisdiction as to traffic from Canada into the United States is limited to that portion of the haul performed within the United States. *Emery & Co. v. B. & M. R. R.*, 38 I. C. C., 636. In so far as the matter of reparation is concerned, although we are without power to enforce an order against the Chatham, Wallaceburg & Lake Erie Railroad, if these railroads constituting a through route for traffic from a point in Canada to a point in the United States concurred in a through rate or a carload minimum that was unreasonably high, they are jointly and severally responsible for any damage that might result to any shipper on account of such unlawful rate or minimum.

We find that charges on shipments of dried beet pulp from Wallaceburg, Ontario, to points in the states of New York and New Jersey during the period from February 18, 1915, to April 1, 1916, were unreasonable to the extent that they exceeded charges which would have been applicable had the minimum been 34,000 pounds. We further find that the complainant paid and bore the charges assessed on the shipments described in the complaint and the sub-complaints; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued based on the minimum herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation directed against all carriers defendant except the Chatham, Wallaceburg & Lake Erie Railroad.

52 I. C. C.

No. 9632.

HUMPHREYS-GODWIN COMPANY

v.

VICKSBURG, SHREVEPORT & PACIFIC RAILWAY  
COMPANY.

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*Submitted July 16, 1917. Decided January 14, 1919.*

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1. Rate on cotton seed, in carloads, from Shreveport, La., to Vicksburg, Miss., found to have been unreasonable. Reparation awarded.
2. Demurrage charges found to have been legally applicable and not shown to have been unreasonable.

*R. G. Clarke* for complainant.

No appearance for defendant.

## REPORT OF THE COMMISSION.

## BY THE COMMISSION :

Complainant is a corporation dealing in cottonseed products at Memphis, Tenn. By complaint filed March 6, 1917, it alleges that the rate of 25 cents per 100 pounds charged by defendant on six carloads of cotton seed shipped from Shreveport, La., to Vicksburg, Miss., between June 18 and 25, 1914, inclusive, was unreasonable to the extent that it exceeded 12 cents, and that \$20 demurrage charges accruing at Vicksburg were unreasonable.

The claim was presented to the Commission informally August 3, 1914. The shipments aggregated 294,600 pounds and charges were collected in the sum of \$756.50, including the demurrage charges. Defendant made application on our special docket for permission to refund \$402.98, this including the demurrage charges. On May 24, 1915, the parties were advised that the transportation records failed to show that complainant was either the consignee or the consignor of the shipments, and that we would not on the special docket authorize reparation to any one other than the consignee or consignor. On June 30, 1916, complainant was notified that the claim was denied without prejudice to the right to file a formal complaint. At complainant's request the claim was reconsidered and, on September 12, 1916, it was again advised that the matter could not be disposed of informally.

The shipments upon which reparation was claimed were purchased by the S. & F. Cotton Oil Company, described as "an unincorporated

52 I. C. C.

concern" engaged in buying cotton seed and manufacturing cotton-seed products at Memphis, from the Caddo Cotton Oil Company, and were paid for by complainant.

Defendant's agent quoted a rate of 12 cents from Shreveport to Vicksburg. The shipments were billed by the Caddo Cotton Oil Company to itself at Vicksburg, with the notation "notify S. & F. Cotton Oil Co." The bills of lading were surrendered and freight charges paid by the Union Brokerage & Commission Company of Vicksburg as the agent of the S. & F. Cotton Oil Company. The latter was reimbursed by complainant. The rate from Shreveport to Vicksburg was 25 cents instead of 12 cents and the freight charges were corrected to that basis. While awaiting confirmation of the 25-cent rate the shipments were held at Vicksburg for several days and demurrage amounting to \$20 accrued.

Apparently new bills of lading were taken out and the cotton seed ultimately moved to Memphis over the Yazoo & Mississippi Valley Railroad. At the time the shipment moved there was no joint rate on cotton seed from Shreveport to Memphis. The legal rate over defendant's line to Vicksburg and the Yazoo & Mississippi Valley thence to Memphis was a combination rate of 37 cents consisting of the rate of 25 cents to Vicksburg and 12 cents beyond.

Effective November 1, 1911, a commodity rate of 12 cents was published on cotton seed from Shreveport to Vicksburg. The carriers had intended to limit the rate to cottonseed soap stock, and effective October 1, 1912, the 12-cent rate was canceled. On November 26, 1914, defendant restored the rate of 12 cents and it remained in effect until it was increased by the Director General of Railroads.

Shreveport is 172 miles from Vicksburg. Complainant introduced the following comparisons:

To Memphis, Tenn., from—	Distance.	Rate.	Railroad.
	<i>Miles.</i>	<i>Cents.</i>	
Benton, Ark.....	171	12	Missouri Pacific.
Malvern, Ark.....	191	12 $\frac{1}{2}$	Do.
Hope, Ark.....	200	14	Do.
Centerville, Ark.....	215	13	Chicago, Rock Island & Pacific.
Opitz, Ark.....	165	12	Do.

Reference was also made to rates of 12 cents maintained by other carriers in this territory, some of them for distances as great as 294 miles. The Louisiana, Arkansas, and Mississippi railroad commissions prescribe a 12-cent rate on cotton seed for a maximum haul of 240 miles.

At the time the shipments moved there was in effect a rate of 7 $\frac{1}{2}$  cents on delinted cotton seed from Shreveport to Vicksburg, which was characterized by defendant as a "paper rate."



Defendant's answer is in effect a general denial. It was not represented at the hearing. No briefs were filed.

Complainant paid for the cotton seed and paid the freight charges in issue, the S. & F. Cotton Oil Company acting as its agent. In *Lindsay Bros. v. G. R. & I. Ry. Co.*, 15 I. C. C., 182, we said at page 183:

Some point was made that complainant was not entitled to reparation because as a matter of fact it was neither consignor nor consignee, but the evidence is conclusive that complainant bore the burden of any charge over and above what would have been charged \* \* \* the result in this particular case being that complainant actually sustained the loss claimed.

In *Oden & Elliott v. S. A. L. Ry.*, 37 I. C. C., 345, 348, we said:

The ultimate test as to who shall recover was, and is, the bearing of the freight charges for the transportation service; and, as we have seen, this may be either the consignor or the consignee, or another party, even though not disclosed at the time the shipment was made. It is elementary that an undisclosed principal of a nominal shipper can maintain an action at law against a carrier for damages to a shipment in transit.

We are of opinion and find that the rate from Shreveport to Vicksburg was unreasonable to the extent that it exceeded 12 cents per 100 pounds; that the charges collected on the shipments were unreasonable to the extent that they exceeded those that would have accrued at a rate of 12 cents per 100 pounds, which would have been reasonable; that the shipments were made as described in this report; that complainant bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$382.98, with interest.

The demurrage charges assailed accrued as a result of complainant's refusal to pay the legally applicable rate to Vicksburg, and they are not shown to have been unreasonable.

Complainant seeks no order for the future. Since the case was submitted the rate found reasonable has been replaced by rates initiated by the Director General of Railroads in the exercise of power delegated by the President. The rates so initiated are not attacked in this proceeding.

An order awarding reparation will be entered.

52 I. C. C.

No. 7893.<sup>1</sup>  
ROYAL MILLING COMPANY  
v.  
GREAT NORTHERN RAILWAY COMPANY.

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*Submitted October 12, 1918. Decided January 14, 1919.*

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Conclusion that complainant is subjected to unjust discrimination by the maintenance of a charge of 2 cents per 100 pounds for milling wheat in transit at Great Falls, Mont., as compared with eastern and western terminal mills, affirmed on rehearing. Complaint dismissed without prejudice.

*O. W. Tong* for complainant.

*John F. Finerty* for defendant.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

The original report of July 13, 1916, is found in 41 I. C. C., 29, and embraces 7892, 7893, and 7894. Upon petition reargument was granted and the second report, found in 47 I. C. C., 263, was issued November 12, 1917. Subsequently defendants requested rehearing in the three cases, but their petition as to 7892 was denied.

Complaints in 7893 and 7894, in substance, attacked as unreasonable and unduly prejudicial the transit charge at Great Falls, Mont., and also the aggregate charges, consisting of the freight rate plus the transit charge, on which carload shipments of wheat are made from points on defendant's line in Montana to Great Falls, there milled into flour and the product shipped to St. Paul and Minneapolis, Minn., and other points, known as eastern terminals, on the one hand, and to Seattle and Tacoma, Wash., and other points, known as the western terminals, on the other. Reference may be had to the two previous reports for a full statement of the issues and facts. Reparation is not sought although embraced in the previous proceedings. Rates will hereafter be stated in cents per 100 pounds.

In the first report it was found that neither the transit charge of 2 cents nor the aggregate charges had been shown to be unreasonable or unduly prejudicial and the complaint was dismissed. The Commission subsequently stated, after reargument, that while the charges were not unreasonable *per se* they operated to prejudice unduly complainant at Great Falls and prefer unduly its competitors at the eastern terminals, which are the rate-breaking points on traffic

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<sup>1</sup> The report also embraces No. 7894, Same v. Great Northern Railway Company et al, 52 I. C. C.

destined east of Chicago, Ill., to points having no joint through rates. No order was entered inasmuch as the carriers forming through routes to the east were not parties to the proceeding. As a means of eliminating the prejudice and disadvantage the Commission suggested that (1) if the carriers continued to publish from Montana points to destinations east of Chicago rates on grain and grain products which break on the twin cities substantial rate equality would be effected by permitting transit at country mills at the total through charges plus a transit charge not exceeding one-half cent; (2) by establishing in-and-out rates at country mills no higher than the in-and-out rates at the twin cities or other rate-breaking points; or (3) by substituting for the present rates through rates from the point of origin of the grain to the ultimate destination of the flour with a transit charge at all intermediate points, including those which are now rate-breaking points.

Inasmuch as the charges on grain milled in transit at Great Falls were not found to be unreasonable the Great Northern Railway Company, hereinafter referred to as defendant, was unwilling to adopt the first suggestion, also for the fact that it affected the milling in transit of all Montana grain, whether at Great Falls or other points. Defendant takes exception to the second and third suggestions, as they involve not only its own rates but also rates of its connections, none of which was a party to the proceeding. In petitioning for rehearing defendant urged that carriers interested in through rates be brought into the case and that an investigation be instituted to determine the propriety of the transit charge of 2 cents as applied to all Montana grain. The cases were assigned for rehearing, however, on the issues presented in the original complaints.

Much of the present record consists of evidence bearing upon the inherent reasonableness of the 2-cent transit charge and the aggregate charges including the transit charge. The increase in the cost of performing transit service in general since the time of the last hearing was emphasized, as well as the physical changes in the yards at Great Falls, which necessitate more extensive handling. A decrease in defendant's net revenue for certain months in 1918 as compared with the same period of 1917, in spite of increased gross revenue, was referred to as a reason for maintaining the present charge. Exhibits of accounting forms were presented showing the additional entries entailed in connection with a shipment stopped for transit which are not incident to a shipment without transit. Nothing of record indicates to what extent, if any, the decrease in the net revenue was due to the performance of transit services generally, or, more in particular, at Great Falls. Defendant acknowledged that the accounting effort

and expense are practically the same as attach to similar transit shipments on other lines. For the reason that the Commission has, in its two previous reports, announced that the charges assessed on shipments involved in these cases are not unreasonable, observations from the present record addressed to the reasonableness of the rates need not be set out in detail. Suffice it to say the evidence further supports the view expressed in the preceding reports.

The undue prejudice which the Commission found to exist results from the ability of the terminal millers to draw grain from Montana and ship the product to points east of Chicago, to which no joint through rates are published, at charges combining on the twin cities, which are 2 cents less than rates available to complainant.

The lines of defendants in these proceedings do not extend beyond the twin cities and they could not therefore be held solely responsible for the situation. The Commission, however, without entering an order, stated that the defendant, either in conjunction with its connections or by changing its own rates, should effect such an arrangement as would relieve complainant of the disadvantage. Defendant, however, sets up the bar that it is not amenable to an order without the joinder of all carriers participating in through movements east of Chicago.

The record on rehearing contains no supplemental evidence which tends to justify or mitigate the disadvantage to complainant heretofore found to exist. Defendant attempted to show that complainant does not suffer from the rate disparity because it is owned and controlled by a large milling company at Minneapolis which has a milling capacity of from 30 to 35 per cent of the Minneapolis output and therefore would be benefited by the alleged discrimination. Complainant's manager denied such ownership or control and insisted that the particular mill at Minneapolis represented legitimate competition in the east, as did also about 22 other mills at Minneapolis. While advanced with apparent reliance, the purport of this contention is not apparent; moreover, no question of damage arising from discrimination is concerned in the rehearing.

As stated in the Commission's second report, competition in grain and flour is national in scope, and transit should not be regarded merely from the standpoint of service performed at any particular point. The suggestions made in that report were not based upon the consideration of the cost of transit at Great Falls but upon consideration of the relative position of the interior miller and the terminal miller, and of the general policy of the carriers throughout the country to equalize the two at reasonable transit charges.

The original report states that during the period from April 1, 1913, to July 1, 1915, more than one-fifth of complainant's flour

shipments from Great Falls moved to western-coast points. But little has been said in the previous reports respecting this feature of the case because of the insufficiency of the record. Complainant still conducts an immense business in the west, and the present record is amplified by testimony indicating the disadvantage to complainant and the corresponding preference accorded western terminal millers, with whom complainant competes on shipments of flour to points beyond the terminal points, to be the same as exists with respect to traffic destined east of Chicago.

MEYER, *Commissioner*.

Since the foregoing report of the examiner was served on the parties the complaints herein have been amended to include the Director General of Railroads as defendant and to bring under review rates initiated by the President through the Director General. The Director General waived further hearing and consented that the evidence heretofore submitted may be considered by the Commission as far as relevant in determining the questions at issue.

Argument was had and no exceptions were taken to the facts as stated in the tentative report.

The complainant's disadvantage at Great Falls as compared with competitors at Minneapolis has been increased since the last hearing by the withdrawal of the transit charge formerly exacted on Montana grain moved under joint rates to Chicago rate points and milled in transit at Minneapolis and the retention of the transit charge at Great Falls. The situation previously in effect is described in our second report, 47 I. C. C., 263, 265, where we said:

From Great Northern points of origin here involved to Chicago and Chicago rate points through rates are in effect  $2\frac{1}{2}$  cents lower than the combination on Minneapolis with transit at Great Falls and Minneapolis upon the same terms, namely, 2 cents per 100 pounds. Therefore to Chicago complainant can ship upon an equality with millers located at Minneapolis. This, however, is not true to points farther east to which no joint through rates are in effect from Montana points of origin.

Under the rates in effect to-day complainant is not only at a disadvantage as compared with competitors at Minneapolis on grain milled in transit and the product shipped to points east of Chicago, but also on grain the product of which is shipped to Chicago and Chicago rate points. Upon the argument defendants indicated their willingness to equalize Great Falls and Minneapolis on shipments moving under joint rates to Chicago and Chicago rate points either by exacting the same transit charge at both points or by making no charge for transit at either point. Since the argument the Western Freight Traffic Committee of the Railroad Administration has made

52 I. C. C.

the following recommendation under its Docket No. 1629, which, however, has as yet not been acted upon:

Recommended, that the transit charge of 2 cents per 100 pounds where now imposed for the milling in transit of grain originating at points in Montana when destined to Chicago, Milwaukee, Green Bay, and Peoria, and points taking same rates or arbitraries higher, provided through rates are in effect to such points of destination, also when destined to points beyond the destinations above enumerated, be eliminated.

If this recommendation is adopted Great Falls will have been equalized with Minneapolis, not only on grain milled in transit and the product forwarded to Chicago, but also on grain the product of which is forwarded to New York and other points east of Chicago. This will be true because, effective June 25, 1918, the combination on Minneapolis of rates on grain and grain products from Montana points of origin to New York, which had theretofore been 5.2 cents lower, became 1 cent higher than the combination on Chicago. Thereby it became advantageous to Minneapolis millers, even on shipments to points east of Chicago, to avail themselves of transit in connection with through rates from Montana points to Chicago and reconsign to destinations east thereof rather than ship on rates in and out of Minneapolis.

As observed in our previous report, 47 I. C. C., 263, 265, Great Falls has been equalized with the western termini on shipments of wheat and its products to certain California points by transit at Great Falls without extra charge in connection with joint rates which are no higher than the combination on the western termini. There remain, however, certain destinations to which no joint rates apply and to which the rates from Montana points of origin break either on the eastern or western termini. On shipments to such destinations defendants are disinclined to equalize Great Falls with the termini. The same considerations, however, which lead to the conclusion that it is unjustly discriminatory for defendants to charge for transit at Great Falls but not at Minneapolis on shipments destined to Chicago and moving under joint rates lead to the conclusion that it is unjustly discriminatory on shipments which take rates made by combination either on the eastern or western termini. If there are other mills in this territory similarly situated, the relief herein found necessary for Great Falls should be extended to them.

While complainant has in effect joined as defendants the carriers beyond the eastern and western termini by bringing in the Director General as a party defendant the complaints have never been broadened so as to embrace a consideration of the total charges on through movements to points beyond the termini. The plead-

52 I. C. C.

ings therefore do not afford a sufficient basis for an order to effect the desired equalization of the transit charges and the complaints will be dismissed without prejudice.

HALL, *Commissioner*, dissenting:

By the majority report the Commission for the third time in these cases finds that on the traffic in issue, Montana grain milled in transit and the flour product moving to specified eastern and western rate-breaking terminals, of which Minneapolis and Seattle are representative, neither the transit charge of 2 cents at Great Falls, nor the aggregate charge consisting of the freight rate plus the transit charge, has been shown to be unjust, unreasonable or unduly prejudicial. It follows that, as found in the original report, 41 I. C. C., 29, the complaints should be dismissed, and to this extent I agree with the majority report.

But in the second report, 47 I. C. C., 263, at 266, the majority called attention to traffic not in issue, as to which pleadings and record were barren and necessary parties not before it, and declared that in shipping the product of Montana grain to points east of Chicago, complainant was at a disadvantage, of which it had not complained, as compared with terminal millers at Minneapolis, for example. It accordingly offered three suggestions as to how this disadvantage could be removed, but made no order. These suggestions are recited in the proposed report of the examiner incorporated in the present majority report. Nothing was said about traffic to points beyond the western terminals.

Following this report the Great Northern, sole defendant in No. 7893, traffic to eastern terminals, but joined with one of its subsidiaries and the Spokane, Portland, and Seattle as defendants in No. 7894, traffic to western terminals, asked further hearing for the following purposes, among others, as stated in its petition therefor: (1) in order that all carriers interested might be made parties; (2) in order that the Commission might make such investigation as may be necessary to determine propriety of the application of the transit charge on all Montana grain, and not merely on grain milled at Great Falls; \* \* \* (5) for such evidence as may be relevant to the issues raised by the majority report.

The petition was granted and further hearing had in April, 1918. No other carriers were made parties; no investigation was ordered by the Commission; no change was made in the pleadings. Representatives of two other carriers, the Northern Pacific and the Milwaukee, which also serve milling points in Montana and collect the 2-cent transit charge at those points, were present at the hearing, but, as then stated by defendant's attorney, were not in position to

52 I. C. C.

enter appearance or offer any evidence on account of the state of the record. The presiding examiner ruled in effect that the suggestions made by the majority in the second report had no reference to west-bound traffic, and intimated that evidence as to milling points other than Great Falls would doubtless be included in the general investigation and need not be introduced at the hearing in these cases. The hearing proceeded accordingly along restricted lines, and practically no evidence was introduced relevant to the "issues raised by the majority report."

After the hearing and before the argument complainant tendered motion and supplemental complaint bringing in the Director General as a party defendant. Here again the issues were not enlarged, the complainant renewing its previous complaints in all particulars, showing that there had been no material change affecting the merits except that the freight rates set forth in said complaint, i. e., the rates on traffic from Montana points to eastern and western terminals, but not beyond, had been increased under General Order No. 28, of the Director General without change in the transit charges complained of, and stating that complainant's causes of action against the Director General were the same as alleged in the previous complaints against the Great Northern.

To this supplemental complaint the Director General answered, appearing by counsel who was not present at the argument. His answer was similar to that recited in the *Willamette Valley Case*, 51 I. C. C., 250, and concludes as follows:

He does not demand further hearing of evidence in this case, and consents that, *in so far as it is relevant*, the evidence heretofore submitted may be considered by the Commission in determining the questions *now properly at issue*.

And having fully answered he prays that the original petition and supplemental petition may be dismissed. (The italics are mine.)

Counsel for the defendant Great Northern apparently conceded on the reargument that the bringing in of the Director General as a party defendant had in effect brought in the carriers participating in rates beyond the terminals, and the majority report seems to rest in part upon that assumption. I am constrained to the view that the Director General was brought in only to meet the issues presented by the pleadings and the evidence relevant thereto. It does not appear that he had notice of the "issues," if they may be called such, raised for the first time by the second report in these proceedings, 47 I. C. C., 263, as to traffic for beyond the terminals, or that any material evidence relevant to that "issue" was introduced at the hearing.

The reasonable transit charge of 2 cents applied at Great Falls is carried in a tariff rule which is general in terms and applicable on Montana wheat at all milling points in or out of Montana



on the line of the Great Northern on traffic to Minneapolis or destinations intermediate thereto. Similar rules are carried by competing carriers serving Montana points. It is not claimed by anyone that these competing carriers have been made parties defendant or are here represented by the Director General. There are now from 60 to 80 mills in Montana alone. No issue and no evidence as to unreasonableness or undue prejudice in application of the 2-cent transit charge at these other milling points, whether on defendant's line or the lines of its competitors, is before us. One mill is complainant, one carrier defendant, one application of the transit charge, viz, at Great Falls, is under attack. When the complaint was filed complainant had the only mill there. Now there is one more, a total of 2 out of over 60 in the state, to say nothing of those between Montana and the twin cities. All the others pay the 2-cent transit charge. I can not escape the conviction that the conclusions of the majority, if they are sound, should rest upon a record which will support them.

The majority report apparently proceeds upon the theory that it is a proper function of the Commission substantially to equalize the transportation expense of the intermediate miller with that of the terminal miller in order, as was said in the second report, that the milling industry will not "be unduly concentrated at more or less arbitrarily selected points." In speaking of the act to regulate commerce, the Supreme Court said in *Interstate Com. Comm. v. Dittenbach*, 222 U. S., 42, 46: "The law does not attempt to equalize fortune, opportunities, or abilities." We have frequently held that we are without power to equalize natural or commercial disadvantages. *Import and Domestic Rates-Clay*, 39 I. C. C., 132, 135 and cases cited; *Douglas & Co. v. Illinois Central R. R. Co.*, 31 I. C. C., 587, 595; *Empson Packing Co. v. C. M. Ry. Co.*, 22 I. C. C., 268, 270. In *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, 163, we said that "it is no part of our duty to so adjust rates that business will or will not be done at a particular point," and in *Baltimore Chamber of Commerce v. B. & O. R. R. Co.*, 22 I. C. C., 596, 603, cited with approval in *Board of Trade of Kansas City v. St. L. & S. F. R. R. Co.*, 32 I. C. C., 297, 311:

It is not within the power of this Commission to equalize economic conditions, or to place one market in a position to compete on equal terms with another market as against natural advantages.

I agree with the majority that the record will not support an order. Our conclusions draw force and virtue from the fact that they are reached after full hearing and no conclusion, particularly in a matter of the complexity of transit on grain, should be announced except upon an adequate record in a case in which the question and the necessary parties are properly before us.

No. 9788.

CLEVELAND LUMBER COMPANY

v.

ALABAMA CENTRAL RAILROAD COMPANY ET AL.

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*Submitted December 11, 1918. Decided January 21, 1919.*

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Rates on lumber in carloads from Patton Switch, Sunlight, and Ford Switch, Ala., to interstate destinations found to be unduly prejudicial to the extent that they exceed the rates contemporaneously maintained from Manchester, Ala.

*W. F. Finch* for complainant.

*M. P. Callaway* for Illinois Central Railroad Company, Southern Railway Company and others; and *L. C. Britton* for Alabama Central Railroad Company.

*R. Walton Moore* for Director General of Railroads.

#### REPORT OF THE COMMISSION.

##### DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

The Alabama Central Railroad is 12.9 miles in length and extends north from Jasper, Ala., where it connects with the Illinois Central Railroad, the St. Louis & San Francisco Railroad, and the Northern Alabama Railway, the last-named carrier being part of the Southern Railway system. A considerable quantity of lumber is shipped from Manchester, Ala., 6 miles north of Jasper, and from other stations on the Alabama Central as far as and including Ford Switch, Ala., its terminus. The part of the line beyond Manchester is a logging road owned by the Manchester Saw Mills, a corporation which hauls logs with its own equipment over these tracks to Manchester, where they are converted into lumber. This portion of the line is used by the Alabama Central under lease, without other rental than the cost of maintenance. The Alabama Central transports lumber as a common carrier in interstate commerce from Manchester and points north thereof and operates both freight and passenger trains between Jasper and Ford Switch. There is a question as to the right of the Alabama Central to transport pine lumber as a common carrier from points north of Manchester. Its contract with the sawmills company provides that it shall not do so, and the supreme court of Alabama recently refused to sustain an order of the public service commission of that state requiring the

52 I. C. C.

Alabama Central to lay a sidetrack at a sawmill north of Manchester, on the ground that the railroad company has no right under the contract to use the property of the sawmills company for purposes not specified in the contract.

The present interstate rates on lumber from Manchester are on the Jasper basis, no charge in addition to the rates from main-line points being imposed. From Patton Switch, Sunlight, and Ford Switch, all located north of Manchester, no joint through rates are now published, the lowest rates available being those made by combination on Manchester, the local rate from all of these points to Manchester being 2 cents per 100 pounds. The complainant, the Cleveland Lumber Company, ships large quantities of lumber from Patton Switch, Sunlight, and Ford Switch and competes with the Manchester Saw Mills, located at Manchester. It alleges that the rates from these three stations to interstate destinations, particularly to the territory north of the Ohio River and west of the Mississippi River, are unreasonable and unduly prejudicial, and reparation is asked on certain shipments. The allegation of unreasonableness was withdrawn at the hearing, as was also the prayer for reparation, leaving for determination only the question whether the maintenance of lower rates from Manchester than from Patton Switch, Sunlight, and Ford Switch subjects the complainant to undue prejudice.

The only witnesses testifying for defendants at the hearing represented the Illinois Central and the Northern Alabama. When questioned as to the reason for extending the main-line basis of rates to Manchester they could only say that it was done by the St. Louis & San Francisco Railroad and that they were not advised as to the reason. This carrier, which, according to the evidence makes and controls the rates from this territory to points north and west, was not represented at the hearing. The Alabama Central introduced no witnesses, giving as the reason its uncertainty as to its rights under the contract with the Manchester Saw Mills, that matter not having been determined at the time of the hearing. In a letter to the Commission before the hearing the general freight agent of this carrier expressed his willingness to satisfy the complaint if the trunk lines would accord his company a division of  $2\frac{1}{4}$  cents per 100 pounds in addition to an arbitrary of one-half cent to which the complainant is said to have agreed at that time. The Alabama Central now receives an allowance of  $1\frac{1}{4}$  cents in addition to the local rate of 2 cents.

The two carriers directly responsible for the rate adjustment having failed or refused to submit evidence, the Illinois Central and the Northern Alabama, whose revenues might be affected by a

52 I. C. C.

change in the rates, introduced testimony in opposition to the complaint. Their principal contention is that it is customary in this territory for the carriers to add arbitraries to the junction point rates in constructing the rates from independent branch lines. Thus, from stations on the Sumter & Choctaw Railway connecting with the Southern Railway at Lilita, Ala., the arbitrary is 2 cents for distances up to 13 miles and 4 cents for greater distances. From stations on the Rome & Northern Railroad, extending northwest from Rome, Ga., the arbitraries vary from 2.3 at 1.3 miles to 3 cents at 18.7 miles. From stations on the Alabama & North Western Railroad, connecting with the Southern Railway at Pine Hill, Ala., a uniform arbitrary of 2 cents is maintained for a distance of 18 miles, greater than the total length of the Alabama Central.

A witness for the Illinois Central Railroad testified that six independent branch lines connect with that road; that they vary in length from 15 miles to 30 miles; that except in one instance the arbitrary is uniformly 2 cents; and that the Illinois Central makes allowances to these branch lines of  $1\frac{1}{2}$  cents or 2 cents in addition to the arbitraries. This practice of blanketing all the branch-line stations under a common rate is what the complainant seeks to have extended to the Alabama Central. The Illinois Central objects to doing so, not only because the rates from northern Alabama are considered relatively low, but because the complainant's shipping stations are located on a logging road not owned by the Alabama Central but operated under lease; and because the haul beyond Manchester involves an additional service.

It is the usual practice of the carriers in this territory to make the lumber rates from their own branch lines the same as those from main-line stations, and to maintain rate blankets of considerable size. Thus, the St. Louis & San Francisco Railroad maintains a 13-cent rate on lumber to Cairo, Ill., from practically all its stations in Alabama, Jasper and west, and the group even extends into Mississippi. Practically the whole line of the Northern Alabama Railroad is similarly blanketed. To the south of the territory here involved is the so-called "standard lumber blanket," described in *McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co.*, 43 I. C. C., 581, as embracing—

all points located on the so-called trunk lines and some short lines in the states of Louisiana, Mississippi, Alabama, and Florida, east of the Mississippi River, south of a line drawn from Vicksburg, Miss., through Jackson and Meridian, Miss., Thelma, Montgomery, and Opelika, Ala., to the Chattahoochee River, and west of the Chattahoochee River to the Gulf of Mexico, a lumber-producing territory extending approximately 400 miles east and west and 150 miles north and south.

All of the stations on the Alabama Central from which lumber is shipped are located within 7 miles of Manchester, and it would seem clearly to be advisable to blanket all of them under a common rate. The two defendant carriers which participated in the hearing took the position that the rate from points beyond Manchester should be higher than the Manchester basis because otherwise the Alabama Central, having extended its operation to stations nearly 7 miles beyond Manchester, would receive no greater earnings on tonnage from those stations than it receives on Manchester traffic, but the same argument would apply to any branch line, and if its validity were recognized the result would be the establishment of rates on something akin to a distance scale on all such lines. When it is considered that many of the lumber rates in this territory are blanketed over wide areas, the carriers disregarding extra line hauls and differences in distances many times greater than the total length of the Alabama Central, it seems clearly inadvisable to divide these four shipping points, located within 7 miles of each other, into two rate groups, even if a close scrutiny of the situation discloses that the additional haul from the stations beyond Manchester involves an additional service.

It is true that it is not customary in this territory to extend junction point rates to stations located on the lines of independent branch-line carriers, but the propriety or impropriety of this practice is in no sense involved in the present proceeding. For reasons which we do not know, the junction point basis has been applied at Manchester. Whether it should continue to be so applied is not here in issue. The sole question presented is whether the defendants subject the complainant to undue prejudice by maintaining higher rates from Patton Switch, Sunlight, and Ford Switch than the rates contemporaneously maintained from Manchester. Conceding for the purposes of this case the propriety of imposing an additional charge for the extra service involved in transporting lumber from branch-line stations, the evidence already referred to shows that it is not uncommon to publish a 2-cent arbitrary to cover such additional service and to apply it uniformly from branch-line stations located much farther apart and somewhat farther from the junction point than are the shipping points with which we are here dealing.

WOOLLEY, *Commissioner*:

A report proposed by the examiner who heard the case, substantially as above, with a recommendation that we find that the rates on lumber from Patton Switch, Sunlight, and Ford Switch to all interstate destinations are, and for the future will be, unduly prejudicial to complainant to the extent that they exceed the correspond-

52 I. C. C.

ing rates contemporaneously maintained from Manchester, was served upon the parties. Effective June 25 last both the rates from Manchester to interstate destinations and the local lumber rates of the Alabama Central were increased pursuant to General Order No. 28 of the Director General of Railroads, the rate from the three complaining points to Manchester becoming 2.5 cents per 100 pounds, minimum \$15 per car. Subsequently the complaint was amended to include the Director General as a defendant and to bring in issue the present rates. The Director General has waived further hearing and consented that the relevant testimony submitted be considered in determining the issues.

Upon consideration of the record we adopt the report and conclusions of the examiner as the report and conclusions of the Commission. An order will be entered requiring the removal of the prejudice and disadvantage to complainant found to be undue.

52 I. C. C.

No. 9005.

## RAPSON COAL MINING COMPANY

v.

## COLORADO &amp; SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted November 25, 1918. Decided January 27, 1919.*

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1. Rates on bituminous nut coal, in carloads, from Rapson, Colo., to certain destinations in Oklahoma and Kansas found to have been and to be unreasonable. Reasonable maximum rate prescribed and reparation awarded.
2. Record does not warrant establishment of joint rate over route of movement.

*Carle Whitehead and Albert L. Vogl for complainant.**E. E. Whitted, A. S. Brooks, Robert Dunlap, T. J. Norton, F. E. Andrews, and J. J. Coleman for defendant carriers.**R. Walton Moore for Director General of Railroads.*

## REPORT OF THE COMMISSION.

## DIVISION 3, COMMISSIONERS CLARK, HALL, AND DANIELS.

## BY DIVISION 3:

Complainant is a corporation engaged in mining bituminous coal at Rapson, Colo. By complaint seasonably filed it alleges that the rates charged by the defendant carriers on five carloads of bituminous nut coal shipped from Rapson to Protection, Kans., and to Norman, Avard, and New Burlington, Okla., in May, July, and October, 1914, were unreasonable to the extent that they exceeded a rate of \$2.85 per net ton applicable over another route. Reparation and the establishment of a joint rate over the route of movement are asked. By supplemental complaint filed on September 30, 1918, after the hearing the Director General of Railroads was made a party defendant. He answered, but no further hearing was asked or had. Rates are stated in amounts per net ton.

Rapson is on a spur running from the main line of the Colorado & Southern Railway at Rugby, Colo., a point 16 miles south of Walsenburg, Colo., and is included in the Walsenburg district. The shipments moved as routed over the Colorado & Southern to Sixela, N. Mex.; Fort Worth & Denver City Railway to Amarillo, Tex.; and the Pan Handle & Santa Fe and the Atchison, Topeka & Santa Fe railways, hereinafter collectively called the Santa Fe, beyond. The shipment to New Burlington was originally consigned to Wakita, Okla., but was reconsigned at Harper, Kans. Charges were

52 I. C. C.

collected on all the shipments in the sum of \$565.58, based on a rate of \$2.85 and an aggregate weight of 395,500 pounds, and included a reconsigning charge of \$2 on the New Burlington shipment. The \$2.85 rate applied from points in the Walsenburg district to the destinations named and to other points on the Santa Fe in Kansas and Oklahoma for distances varying from 412 to 714 miles, but was applicable only by way of the Colorado & Southern to Trinidad, Colo., and thence by way of the Santa Fe through Hutchinson, Kans. The defendants subsequently collected \$723.86 which, except as hereinafter noted, covered the balance due at the combination rates applicable over the routes of movement, composed of a rate of \$2.75 to Higgins, Tex., and the local rates beyond. On the shipment to Protection the total charges collected were based on a combination rate of \$7.55. A combination rate of \$7.10 was applicable, and this shipment was overcharged \$21.21. The reconsignment of the New Burlington shipment necessitated an out-of-line haul and under a tariff of the Santa Fe then in effect the combination rate of \$6 to Wakita was applicable to the shipment in addition to charges of \$2 for the reconsignment and \$5 for the out-of-line haul. The reasonableness of this tariff provision is not assailed. This shipment was undercharged \$2.08. The present joint rate by way of Trinidad and Hutchinson as well as the combination rates in effect over the route of movement represent increases over the rates formerly in effect as a result of General Order No. 28 issued by the Director General. This increase where the preexisting rate was \$3 or higher per ton was in the amount of 50 cents per net ton.

The application of the rate of \$2.75 to Higgins resulted in a departure from the provisions of the fourth section in that the rate to Amarillo and other points intermediate to Higgins was \$3.10. The carriers subsequently increased the rate to Higgins and to the other intermediate points to \$3.10, thereby removing this departure. It is pointed out for the defendants that the establishment of the \$2.85 rate over the route of movement would result in many fourth section departures. They contend that the \$2.85 rate from the Walsenburg district to destinations in Oklahoma was abnormally low and was established in order to compete with rates on slack coal in effect from southern Kansas mines. Their witness stated that because of favorable operating conditions the route by way of Trinidad and Hutchinson is more economical from a transportation standpoint and effects a saving in terminal expense as compared with the route by way of Amarillo. It is urged that as the applicable rates were made up of a rate to Higgins and the combination of locals beyond, they are not comparable with the blanket rate of \$2.85. The rate of \$2.75



to Higgins yielded a ton-mile revenue of 6.8 mills for a haul of 403 miles; for the hauls beyond Higgins the ton-mile revenues were: To Avard, 26.3 mills; to Norman, 14.1 mills; and to Protection, 23.8 mills.

For the complainant it is urged that it markets more coal in the territory south of Amarillo than in the territory reached by the Santa Fe over the route via Trinidad and Hutchinson, and that the establishment of a joint rate over the former route would be a commercial convenience in the diversion of shipments. The route by way of Trinidad and Hutchinson does not appear to be unduly long as compared with the route by way of Amarillo, and we are of opinion that the record does not sufficiently disclose present transportation and traffic conditions to justify the establishment of an additional joint rate on bituminous nut coal from Rapson to the points of destination named over the route by way of Amarillo.

At the time of movement the Colorado & Southern maintained a joint rate of \$3.60 on nut coal from Rapson to points on the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, between Earlsboro, Okla., 599 miles, and Ardmore, Okla., 802 miles. Shipments moving under this rate were delivered to the Rock Island at Amarillo. The ton-mile revenues yielded under the rates applicable are compared below with the yield for like distances under a \$3.60 rate and under the rate to the same points applicable via Hutchinson.

From Rapson to—	Miles. <sup>1</sup>	Rate applicable.	Ton-mile revenue.	Rate.	Ton-mile revenue.	Miles. <sup>2</sup>	Rate. <sup>2</sup>	Ton-mile revenue.
			<i>Mills.</i>		<i>Mills.</i>			<i>Mills.</i>
Avard.....	496	\$5. 15	10. 4	\$3. 60	7. 2	554	\$2. 85	5. 2
New Burlington.....	534	5. 35	10. 0	3. 60	6. 7	534	2. 85	5. 3
Wakita.....	584	6. 00	10. 2	3. 60	6. 1	521	2. 85	5. 4
Norman.....	691	6. 80	9. 8	3. 60	5. 2	689	2. 85	4. 1
Protection.....	606	7. 10	11. 7	3. 60	5. 9	568	2. 85	4. 7

<sup>1</sup> Over route of movement.

<sup>2</sup> Via Hutchinson.

We find that the rates legally applicable were unreasonable to the extent that they exceeded \$3.60 per net ton. We further find that the through rates applicable to this traffic over the route of movement are, and for the future will be, unreasonable to the extent that they exceed or may exceed by more than 50 cents a rate of \$3.60 per net ton. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable plus charges of \$7 incident to the reconsignment of the New Burlington shipment; and that it is entitled to reparation in the sum of \$570.54, with interest, which amount includes the overcharge above referred to.

An appropriate order will be entered.

No. 9807.

PORTLAND TRAFFIC & TRANSPORTATION  
ASSOCIATION ET AL.

v.

CANADIAN PACIFIC RAILWAY COMPANY ET AL.

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*Submitted January 18, 1919. Decided January 27, 1919.*

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Charges legally applicable on logging engines, in carloads, from Portland, Oreg., to Vancouver, British Columbia, found to have been unreasonable and unlawful. Reparation awarded.

*Wm. C. McCulloch* for complainants.

*H. A. Kimball* for Great Northern Railway Company.

*S. J. Henry* for Northern Pacific Railway Company.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND DANIELS.

By DIVISION 3:

Complainants are the Portland Traffic & Transportation Association, a voluntary organization of shippers at Portland, Oreg., Willamette Iron & Steel Works, and Canadian Willamette Company, Limited, corporations engaged in the manufacture of engines at Portland and Vancouver, British Columbia, respectively. By complaint filed July 23, 1917, as amended, they allege that the charges collected by the defendants on nine carloads of logging engines, shipped from Portland to Vancouver between October 21, 1915, and November 11, 1916, were unreasonable and in violation of section 4 of the act. Reparation is asked. Subsequent to the hearing a supplemental complaint was filed making the Director General of Railroads a party defendant. He answered, but no further hearing was asked or had. Rates are stated in cents per 100 pounds.

Six of the shipments moved over the Great Northern Railway to destination and three over the Northern Pacific Railway to Sumas, Wash., on the international boundary, and the Canadian Pacific Railway beyond, all by way of Seattle, Wash. Charges were collected on eight of the shipments in the sum of \$1,408.63 at the class A rate of 47 cents, minimum 24,000 pounds, governed by the western classification. One of these shipments included a steel tank, weighing 1,000 pounds, upon which the third-class rate of 54 cents was charged. The remaining shipment contained 10,000 pounds of steel plate and 21,050

pounds of logging engines. Charges were collected on the engines at the class A rate of 47 cents, and on the steel plate at the fourth-class rate of 47 cents based on actual weight. The charges on the steel plate are not in issue.

At the time of movement the aggregate of the intermediate rates on logging engines to and from Seattle was 40 cents, composed of a class A rate of 20 cents to Seattle and a commodity rate of 20 cents, minimum 24,000 pounds, beyond. This departure from the provisions of the fourth section was not protected by a fourth section application and the through rate was therefore unlawful. On February 5 and 15, 1917, the Great Northern and the Northern Pacific, respectively, established rates of 40 cents, minimum 24,000 pounds, on logging engines from Portland to Vancouver, thereby eliminating the fourth section violations. On March 15, 1917, these rates were reduced to 39 cents.

It was admitted for the Great Northern and the Northern Pacific, which carrier was responsible for the joint rate published by it in connection with the Canadian Pacific, that the rate charged was unlawful and unreasonable to the extent that it exceeded the aggregate of the intermediate rates and they expressed a willingness to make reparation.

We find that the charges legally applicable were unlawful and unreasonable to the extent that they exceeded those that would have accrued at the aggregate of intermediate rates and carload minima contemporaneously in effect to and from Seattle; that the complainant Willamette Iron & Steel Works made the shipments as described; that the Canadian Willamette Company, Limited, paid and bore the charges thereon and has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found lawful and reasonable; and that it is entitled to reparation in the sum of \$165.21, with interest, from the Great Northern Railway Company, and in the sum of \$60.58, with interest, from the Northern Pacific Railway Company.

An appropriate order will be entered.

52 I. C. C.

No. 9843.

PORTLAND TRAFFIC & TRANSPORTATION  
ASSOCIATION

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY  
COMPANY ET AL.

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*Submitted January 16, 1919. Decided January 27, 1919.*

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Rates on salt, in carloads, from Portland, Oreg., to certain points in Washington, Idaho, and Montana, and to points in Oregon over interstate routes, not shown to have been or to be unjustly discriminatory or unduly prejudicial. Complaint and supplemental complaint dismissed.

*Joseph N. Teal and William C. McCulloch* for complainant.

*H. A. Kimball* for Great Northern Railway Company.

*H. A. Scandrett, A. C. Spencer, and Blaine Hallock* for Chicago, Milwaukee & St. Paul Railway Company; Camas Prairie Railroad Company; and others.

*H. W. Prickett* for intervener.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND DANIELS.

By DIVISION 3:

The defendants' rates on salt, in carloads, from Portland, Oreg., to points in Washington, Idaho, Montana, and to points in Oregon by interstate routes, are assailed herein as unjustly discriminatory and unduly prejudicial. The Inland Crystal Salt Company, of Saltair, Utah, intervened in behalf of the adjustment attacked. By supplemental complaint filed on November 4, 1918, the Director General of Railroads was made a party defendant, and the complainant consented to the increases as provided in General Order No. 28 of the rates for the future prayed in its original complaint. The answer thereto of the Director General denies that complainant is entitled to relief and prays that the original and supplemental complaints be dismissed. No further hearing was asked or had. Rates stated are in amounts per 100 pounds and are those in effect prior to June 25, 1918, on which date they were increased 25 per cent pursuant to General Order No. 28.

In *The Northwestern Salt Cases*, 45 I. C. C., 12, we found that the rates on salt from Saltair, which is about 13 miles west of Salt  
52 I. C. C.

Lake City, Utah, to the destinations named in this proceeding were not shown to be unreasonable, but that the rates from Portland and from Seattle and Tacoma, Wash., were, and for the future would be, unreasonable to the extent that they exceeded or might exceed the class D rates contemporaneously in effect. The rates herein under attack are those established following that decision. The only question for determination is whether those rates subject complainant's members, hereinafter called the complainants, to undue prejudice, to the advantage of competitors at Saltair, from which point the rates to certain of the destinations are less than the class D rates.

No salt is produced at Portland, that handled by the complainants originating almost wholly at points on San Francisco Bay in California. Most of it moves by water to Portland, at which point the complainants have storage facilities sufficient to accommodate several cargoes. The standard or regular steamship lines charge 11.25 cents from San Francisco to Portland, but it was testified that the tramp steamers have in the past moved salt at rates ranging from 6.25 to 8.75 cents. The all-rail rate is 20 cents. The all-rail rate on salt to Spokane from San Francisco when originating at the bay points is 38 cents and from San Francisco proper and Saltair, 40.5 cents. The cost of barging the salt from the bay producing points to the carriers' terminals at San Francisco is borne by the shipper, and the difference in the rates from San Francisco proper, and when originating at the bay producing points, is intended to be equalized by that additional expense to the shipper. The water-and-rail rate to Spokane is 36.25 cents from San Francisco proper and 35 cents from the bay points. The rate from Portland to Spokane, 370 miles, is 25 cents. Portland shippers to Spokane have an advantage of 15.5 cents over competitors at Saltair, but the complainants point out that they are required to secure their salt at San Francisco bay points and pay an inbound rate as well as the 25-cent outbound rate, while Saltair is a producing point and consequently pays no inbound rates.

The amount of salt shipped from Portland is and in the past has been very limited. The destination territory for the most part is supplied direct by producers located at San Francisco bay points and at Saltair. Between July 1, 1916 and November 30, 1917, the number of carloads of salt shipped to points in Oregon, Washington, and Idaho were: 10 from Portland, 483 from Saltair, and 545 from San Francisco. The complainants attribute the small volume of movement from Portland as compared with that from Saltair to the rate adjustment. The all-rail rates generally from San Francisco and from Saltair to these destinations are the same. The complainants can sell salt at Spokane and many of the other destinations under the

same joint rates from San Francisco as apply from Saltair, but they—

object to business of that character as not in line with our regular business, where we have our docks and facilities for doing business, carrying two or three thousand tons of salt, we consider a transaction of that kind as very largely in the nature of a brokerage business.

For the complainants it was testified that to the territory of destination the rates on salt from Portland are equal to the Class D rates, while from Saltair they are less than class D. It is complainants' contention that "the rates on salt from Portland and Saltair ought to be on the same basis and for equal distances should be the same."

Complainants introduced extracts from the records in other proceedings, in an effort to show that operating conditions are more favorable from Portland than from Saltair.

The intervener introduced elaborate tables contrasting the rates from Portland with the rates from Salt Lake City, which rates except as noted are the same as from Saltair, to show that the situation of the former is the more favorable. The following rates to points on the lines of the Oregon-Washington Railroad & Navigation Company and Oregon Short Line Railroad Company are representative:

From Portland to—	Miles.	Class D rates. <sup>1</sup>	From Salt Lake City to—	Miles.	Class D rates. <sup>2</sup>	Rates on salt.
		Cents.			Cents.	Cents
Letourell, Oreg.....	26	6	Clearfield, Utah.....	27	6	* 8
Wyeth, Oreg.....	52	8	Willard, Utah.....	50	11	11
Miller, Oreg.....	103	10	Weston, Idaho.....	102	12	15
Finley, Oreg.....	175	17	Philbin, Idaho.....	174	20	30
Joso, Wash.....	276	23	High Bridge, Idaho.....	279	30	30
Spokane, Wash.....	370	25	Bond, Mont.....	370	36	30
Nampa, Idaho.....	474	32	Weiser, Idaho.....	474	37	30
Seabee, Idaho.....	523	34	Caton, Oreg.....	525	43	35.5
Lakeport, Idaho.....	603	40	Conley, Oreg.....	603	43	35.5
Hill City, Idaho.....	684	41	Joseph, Oreg.....	681	43	39.5
Aberdeen, Idaho.....	778	45	Chard, Wash.....	779	43	37.5
Montpelier, Idaho.....	818	47	Diamond, Wash.....	824	43	40.5
Kemmerer, Wyo.....	893	50	Spokane, Wash.....	885	43	40.5

<sup>1</sup> Applicable on salt.

<sup>2</sup> Class D rates from Saltair are 5 cents higher than from Salt Lake City.

<sup>3</sup> From Saltair, 11 cents.

A blanket rate of 30 cents applies from Saltair to all stations on the Oregon Short Line from the first station west of Pocatello, Idaho, about 187 miles, to and including Huntington, Oreg., about 510 miles. It is explained for the defendants that this rate was established several years ago on request and in the interest of stock raisers in Idaho with the view of placing practically all of the stock raisers in Idaho on a parity. Westward from Huntington the rates from Saltair graduate to 35.5 cents, equal to the all-rail rate from San Francisco to Pendleton, which for competitive reasons is met

52 I. C. C.

from Saltair. To the territory north of Pendleton the rates from Saltair are the same as the all-rail rates from San Francisco and they are applied from Saltair to meet active competition of salt producers at San Francisco.

It is stated that the carriers have been forced to maintain the 40.5-cent rate from Salt Lake City and Saltair to Spokane, which they regard as below the normal basis, in order to permit salt manufacturers at those points to compete with producers on San Francisco bay, who have a proportional 38-cent all-rail rate from San Francisco to Spokane, and that the 40.5-cent rate from Salt Lake City and Saltair is observed as a maximum at intermediate points.

The intervener approves of the carriers' method of maintaining the rates from San Francisco and from Salt Lake City or Saltair on a competitive basis because both are producing territories, but urges that Portland is not entitled to the same basis of rates as Saltair because the latter is a producing point and ships salt in large volume while the former is not a producing point and the movement of salt is inconsequential.

For several years the through rates from San Francisco to the territory of destination were the same as the combinations on Portland, but the defendants' witness testified that there was no appreciable volume of salt moving through Portland on the combination rates at that time and that there has been no substantial variance in the volume since then.

For the defendants it was shown that the westbound movement of empty cars through Huntington between January 1, 1916, and November 30, 1917, was greater than the eastbound movement by considerably more than 2,000 cars per month; and it is stated that the salt from Saltair affords attractive traffic for the surplus empty cars moving westbound while no such surplus is available for traffic eastbound from Portland.

A question is raised on this record as to whether the Inland Railway Company, which serves the Inland Crystal Salt Company at Saltair, is a common-carrier industrial line or a private facility of the salt company, and whether the division of 2.5 cents which the Inland Railway Company receives out of the joint rates on salt from Saltair to the points of destination is excessive inasmuch as the revenue is said to range from \$10 to \$25 per car for hauling the traffic a comparatively short distance. With a view to determining this question the defendants in this proceeding were requested to be prepared to answer at the hearing certain questions submitted by the complainants concerning the relation of the Inland Railway Company to the salt company, but neither the Inland Railway nor the Salt Lake, Garfield & Western Railway, which also participates in the joint rates

from Saltair and finally divides the rates with the Inland Railway, is a party defendant to this proceeding. The record is insufficient to enable us to determine the character of the Inland Railway Company or the propriety of the divisions it receives.

We find that the rates assailed are not shown to have been or to be unjustly discriminatory or unduly prejudicial.

An order dismissing the complaint and supplemental complaint will be entered.

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No. 9834.

AETNA EXPLOSIVES COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

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*Submitted November 8, 1918. Decided January 27, 1919.*

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Elimination of free allowance, not to exceed 500 pounds, for dunnage used in connection with carload shipments of dynamite from Sinnemahoning and Emporium, Pa., to South Amboy, N. J., found justified. Complaint and supplemental complaint dismissed.

*Winthrop & Stimson and George W. Field* for complainants.

*George R. Allen* for defendant carrier.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND DANIELS.

BY DIVISION 3:

This complaint assails as unreasonable the defendant's application of carload rates on dynamite to the dunnage used in connection therewith, and we are asked to prescribe a rule providing for the free transportation of dunnage to the extent of 500 pounds on shipments from Sinnemahoning and Emporium, Pa., to South Amboy, N. J. By supplemental complaint filed after the hearing the Director General of Railroads was made a party defendant. He answered, but no further hearing was asked or had.

Dynamite and other high explosives move in closed cars, the methods of car loading, which require the use of a considerable amount of lumber, being prescribed by us. In general this dunnage,

52 I. C. C.



used to prevent the packages from shifting and becoming subject to high pressure on small areas, consists of extra car lining, false work in the ends, and wedge work in the center of the car, and extra inside doors. The material so used is furnished by the shipper and averages, according to complainant's evidence, about 350 pounds per car. The average loading of 21 carload shipments of high explosives from Sinnemahoning is shown as about 43,000 pounds, exclusive of dunnage.

The defendant does not publish commodity rates on dynamite from and to the points named, nor is this commodity rated in the governing official classification. But in defendant's exceptions to the classification which governs the tariff naming the class rates from and to these points, high explosives, including dynamite, are rated first class in carloads, minimum 20,000 pounds, and double first class in less than carloads. The tariff naming these class rates is also governed by the official classification which, effective October 1, 1912, provided for an allowance of the extra weight, not to exceed 500 pounds per car, for wooden dunnage in box, stock, ventilator, insulated, and refrigerator cars with carload shipments of freight requiring the use of such dunnage, including explosives, with a proviso that in no case would less than the established minimum carload weight be charged. Effective December 1, 1914, this provision was eliminated and the first-class rates applicable to high explosives in carloads from and to the points named have since been charged on the dunnage used in connection therewith. The complainants contend that the former rule should be reestablished, or that the rate assessed for the dunnage should be lower than that applicable to the high explosives. They urge that the elimination of the allowance resulted from a mistaken application of the principles announced in *Dunnage Allowances*, 30 I. C. C., 538, as the dunnage used in connection with explosives is for the purpose of adapting the car to the loading, the inference being that it constitutes an adjunct to the equipment rather than a part of the shipment. Reference is made to a number of other commodities in connection with the transportation of which dunnage allowances are made. No discrimination is alleged, and it is admitted that high explosives, as freight, differ from all other commodities.

The position of the defendant is that the dunnage used in connection with carload shipments of explosives is a necessary and integral part of the shipment rather than an adjunct to the equipment. Reference was made to the admission of the complainants that the equipment furnished is entirely proper; also to the following excerpt from *Dunnage Allowances*, *supra*:

52 I. C. C.

Standard box, stock, ventilated, and refrigerator cars in good repair will accommodate all the ordinary and usual needs of shippers, and if more than this is demanded because of the form, nature, or peculiar characteristics of goods tendered for conveyance some obligation must attach to the shipper in connection with the additional demand.

It is argued that this dunnage, being in the nature of packing, should be charged the same as the package containing the commodity, under the rules of the classification providing for the application of the rate on the commodity transported to the gross weight of the package and contents.

For the defendant it was admitted that under its tariffs allowances are made in some instances for dunnage on carload shipments in closed cars, but it was stated that these exceptions are due to special circumstances, and that it is the policy of its line not to further extend such practices. Allowances on shipments moving on less-than-carload and any-quantity rates are defended on the ground that these rates are much higher than the corresponding carload rates.

Free transportation of dunnage in closed cars is obviously based upon one of two principles: (1) That the dunnage constitutes a part of the carrier's equipment and as such is not subject to a transportation charge, or (2) that the charges for the transportation of dunnage are included in the charges for the transportation of the commodity in connection with which it is used. We are of the opinion that this dunnage partakes of the nature of packing, or packing and bracing, adjuncts properly furnishable by the shipper, rather than ordinary equipment or ordinary equipment accessories properly furnishable by the carrier.

There remains the question of the reasonableness of the rate charged on the dunnage as part of the shipment. The distinction between the package and dunnage used to hold it in place in the car is one of degree rather than kind. It is a rule of almost universal application that the package is charged the same rate as its contents. The convenience of assessing charges in this manner is obvious and this practice results in no inequalities so long as proper consideration is given to both the package and contents in determining the rate. This is no less true of dunnage than of packages.

We find that the defendant has justified the elimination of the free dunnage allowances as applicable to the traffic concerned and an order dismissing the complaint and supplemental complaint will be entered.

No. 9899.

**CROWN WILLAMETTE PAPER COMPANY**

v.

**HOUSTON & BRAZOS VALLEY RAILWAY COMPANY  
ET AL.**

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*Submitted November 16, 1918. Decided January 27, 1919.*

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Rates on crude sulphur, in carloads, from Bryan Mound and Freeport, Tex., and Sulphur Mine, La., to Pulp and Lebanon, Oreg., and Camas, Wash., not shown to have been or to be unreasonable or unduly prejudicial. Complaint and supplemental complaint dismissed.

*John J. Seid* for complainant.

*E. S. Banks* for Houston & Brazos Valley Railway Company and its receiver; *Elmer Westlake* for Southern Pacific Company, Louisiana Western Railroad Company, and others; and *W. A. Poteet* for transcontinental lines.

*R. Walton Moore* for Director General of Railroads.

**REPORT OF THE COMMISSION.****DIVISION 3, COMMISSIONERS CLARK, HALL, AND DANIELS.****BY DIVISION 3:**

In its complaint, filed September 24, 1917, as amended, the complainant alleges that the rates charged by the defendant carriers on crude sulphur, in carloads, shipped on and after December 13, 1916, from Bryan Mound and Freeport, Tex., and Sulphur Mine, La., to Pulp and Lebanon, Oreg., and Camas, Wash., were unreasonable and unduly prejudicial. It asks for reparation and the establishment of reasonable rates. By supplemental complaint filed after the hearing the Director General of Railroads was made a party defendant. He answered, but no further hearing was asked or had. Rates are stated in cents per 100 pounds.

Bryan Mound and Freeport are south of Houston, Tex., on the Houston & Brazos Valley Railway which connects at Anchor, Tex., with the International & Great Northern Railway, and at Angleton, Tex., with the St. Louis, Brownsville & Mexico Railway. The route by way of Anchor is known as the Ogden route and that via Angleton as the Southern Pacific route. Sulphur Mine is on the line of the

52 I. C. C.

Brimstone Railroad & Canal Company which connects with the Southern Pacific lines near Lake Charles, La. Pulp is on the main line and Lebanon on a branch extending from the main line of the Southern Pacific, 18 and 85 miles, respectively, south of Portland, Oreg. Camas is on the main line of the Spokane, Portland & Seattle Railway, 24 miles east of Portland.

On April 10, 1916, the transcontinental lines established joint commodity rates on crude sulphur in carloads from points in Texas and Louisiana, including Bryan Mound, Freeport, and Sulphur Mine, of 50 cents, minimum 80,000 pounds, to San Francisco, Cal., and on May 15, 1916, from certain points in Texas and Louisiana, including Angleton, Anchor, and Sulphur Mine, rates of 60 cents to Portland and 64 cents to Camas. The Houston & Brazos Valley's local class C rates of from 6 to 8 cents prior to November 1, 1916, and from 9 to 10 cents thereafter, were applied from Bryan Mound and Freeport to Angleton and Anchor in addition to the transcontinental rates to Portland and Camas beyond. On December 28, 1916, and February 28, 1917, the Houston and Brazos Valley extended the application of the transcontinental rates to apply from Freeport and Bryan Mound, respectively, since which dates they have been accorded the same basis as Sulphur Mine except that the joint rates from the two Texas points were not and are not applicable by way of the Ogden route. Effective May 15, 1916, the rates from Sulphur Mine to Pulp were made 66 cents, based on the transcontinental rate of 60 cents to Portland plus the class C arbitrary of 6 cents, minimum 40,000 pounds, beyond; and effective January 1, 1917, 65 cents, based on the local commodity rate of 5 cents, minimum 30,000 pounds, beyond. On May 15, 1916, the rate from Sulphur Mine to Lebanon was made 71 cents, based on the rate to Portland and the local class C rate of 11 cents, minimum 40,000 pounds, beyond. The class C rates and minima are governed by the western classification. The rate of 64 cents to Camas from Sulphur Mine and points taking transcontinental group D, or the Chicago rate basis, was made 7 per cent higher than to Portland, as authorized by Fourth Section Order No. 124. The rate of 66 cents later 65 cents, to Pulp and the rate of 71 cents to Lebanon, stations intermediate to Portland by the Southern Pacific, were based upon the combinations stated, relief from the provisions of the long-and-short-haul clause having been granted by Fourth Section Order No. 4211 of August 28, 1914. On March 15, 1918, following *Transcontinental Commodity Rates*, 48 I. C. C., 79, the Portland rate of 60 cents, minimum 80,000 pounds, was made applicable to Camas, Pulp, and Lebanon. Effective June 25, 1918, the rates from and to the points concerned were increased to 75 cents under General Order No.

28, issued by the Director General of Railroads. The hearing was had prior to this increase and no evidence was adduced with reference to the rates as so increased except the certificate incorporated in said general order that for certain purposes there specified it was necessary to increase the railway operating incomes.

Sulphur is inflammable, and worth from \$18 to \$20 per ton. It is shipped in box cars in bulk, moves regularly in large volume, and loads to capacity, the average of complainant's shipments being above the commodity-rate minimum of 80,000 pounds. It is rated sixth class, minimum 40,000 and 30,000 pounds, respectively, in the official and southern classifications.

The complainant contends that the rates assailed were unreasonable and unduly prejudicial to the extent that they exceeded 54 cents, and asks for the establishment of the 50-cent rate to all north Pacific coast points, the same as the former rate to San Francisco. The rates to the California terminals were increased to 62.5 cents under General Order No. 28.

For the defendants it was stated that the transcontinental rate of 50 cents to San Francisco was established at the shippers' request, based upon representations that sulphur could move to the Gulf at a rate of about 14 cents and thence by water to San Francisco. The Southern Pacific's witness testified that the rate to Portland was made only 10 cents higher than the rate to San Francisco in order to meet water competition for the haul from San Francisco, and cited *Traffic between Portland and San Francisco*, 22 I. C. C., 366, in which we found that the rates between San Francisco and Portland were water depressed and that a class C rate of 45 cents was reasonable from points north of Stockton and Sacramento, Cal., to Oregon points for distances less than half of the Southern Pacific's haul of 746 miles from San Francisco to Portland.

The defendants contend that the rates assailed were and are unduly low to the extent that they were and are less than the class C rates, which class includes other low-grade commodities not susceptible to loss by fire, such as cement, salt, fuller's earth, gypsum, and ground clay; and for the purpose of showing that the rates to these destinations are not ordinarily as low as the rates to San Francisco point out that the class C rates from Bryan Mound and Freeport to Pulp and Lebanon were from April 16, 1917, to June 25, 1918, 20 cents higher than the class C rates to the California terminals.

52 I. C. C.

The following table compares the rates formerly in effect to Portland with the contemporaneous rates to San Francisco and the earnings thereunder:

From—	To—	Route.	Miles.	Rate.	Earnings.		
					Per car. <sup>1</sup>	Per car-mile. <sup>1</sup>	Per ton-mile.
Bryan Mound.....	San Francisco.....	S. P.....	2,184	<i>Cents.</i> 50	\$400	<i>Cents.</i> 18.32	<i>Mills.</i> 4.58
Do.....	Portland.....	do.....	2,838	69	552	19.45	4.86
Sulphur Mine.....	San Francisco.....	do.....	2,250	50	400	17.71	4.43
Do.....	Portland.....	do.....	2,913	60	480	16.48	4.12
Do.....	San Francisco.....	Ogden.....	2,566	50	400	15.59	3.90
Do.....	Portland.....	do.....	2,635	60	480	18.22	4.55

<sup>1</sup> Based on 80,000-pound minimum.

From Bryan Mound and Sulphur Mine by the Southern Pacific route the distance to San Francisco is 654 miles less than to Portland and by the Ogden route 69 miles less than to Portland. Complainant contends that as the distance by the Ogden route to Portland exceeds that to San Francisco by only 69 miles the rates to Portland should be the same as to San Francisco because the physical conditions of transportation over the two routes are similar and states that its shipments usually move over the Ogden route. As above shown the joint rates did not and do not apply from either Freeport or Bryan Mound via the Ogden route.

The defendant's witness stated that the normal basis of rates from Texas and Louisiana points to north Pacific coast points would be 15 cents over the rates to the California terminals, and that the tariffs show many instances where the rates from Texas points to north Pacific coast points exceed the rates to California terminals. It is urged for the defendants that there is no reason why the rates to north Pacific coast points, entailing additional lines, and longer and more difficult hauls, should be the same as to the California terminals.

The Houston & Brazos Valley's local rates, applied in addition to the transcontinental rates up to November 1, 1916, were lower than the scale of rates prescribed for interstate traffic between Texas points in the *Shreveport Case*, 41 I. C. C., 83. Prior to October 10, 1916, when a bridge over the river was completed, the Houston & Brazos Valley reached Bryan Mound by means of an expensive ferry service from Freeport. The road experienced a number of financial disasters through natural causes up to the year 1917, and has been in the hands of a receiver since October 27, 1915. It has operated at a loss and has paid no dividends since 1903. On its behalf it is con-

tended that prior to December 28, 1916, it could not afford to haul this traffic at less than its local rates even during the year 1916 when its trains were run comparatively light and the sulphur movement was 4,527 cars. The sulphur traffic more than doubled during the year 1917, amounting to 9,070 cars and comprising about 90 per cent of its revenue freight, with no corresponding increase in cost of operation, and therefore it has been able to handle the traffic at a profit under its divisions of the joint transcontinental rates, which are less than its locals.

There is no evidence to support the contention that the charging of higher rates to the north Pacific coast points than to California terminals results in undue prejudice.

We find that the rates assailed are not shown to have been or to be unreasonable or unduly prejudicial and an order dismissing the complaint and supplemental complaint will be entered.

52 I. C. C.

No. 9006.

CABIN CREEK CONSOLIDATED COAL COMPANY ET AL.

v.

CINCINNATI, HAMILTON & DAYTON RAILWAY  
COMPANY ET AL.

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*Submitted October 5, 1918. Decided February 13, 1919.*

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Defendants' demurrage rules applicable in 1915 and 1916 on shipments of lake cargo coal held at ports on Lake Erie, awaiting transshipment by water, not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

*Hal H. Smith* for complainants.

*Morrison R. Waite* for defendants.

*T. H. Burgess* for Erie Railroad Company, intervener.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCHORD, MEYER, AND AITCHISON.

The complaint herein attacks as unreasonable and unduly prejudicial certain of defendants' demurrage rules in effect in 1915 and 1916 on shipments of bituminous coal held at Lake Erie ports awaiting transshipment by water. During the season of navigation on the great lakes complainants ship coal from mines in West Virginia and Kentucky to Toledo, Ohio, and other ports on Lake Erie, where it is unloaded into vessels chartered by complainants' customers and transshipped to and through ports at the head of the lakes. Demurrage charges were assessed against all complainants in 1915 and against certain of them in 1916 for detention of cars beyond the free time prescribed by the rules, but they have declined to pay these charges on the ground that the tariffs under which they were assessed were unreasonable. The complaint as filed sets forth at length and in detail the specific objections to the rules then in effect and also prays for the establishment of a uniform code of rules to apply on similar shipments in the future.

Since the complaint was filed there has been a material change in the method of moving coal through the lake ports. An arrangement has been adopted, under the direction of the Lake Erie Bituminous Coal Exchange, for pooling coal of similar qualities and grades intended for transshipment by water. By this plan the number of classifications of coal has been materially reduced, and greater car efficiency has resulted. Other changes have occurred which render it



impracticable at this time to formulate a new code of rules, and complainants have therefore withdrawn this prayer from their complaint. Many of the allegations in the complaint were not specifically discussed at the hearing; others refer more particularly to changes which complainants advocate for application in the future. These allegations will not be considered here. The Commission need consider at this time only the objections urged in complainants' brief, which are that the rules were unreasonable (a) because for the purpose of computing demurrage they divided the period of navigation either into two periods or into months; (b) because they allowed only five days' free time within which to release equipment; (c) because they did not require the notice of arrival of the car to show the point of origin, or, when the car was transferred, the number and initials of the original car; and (d) because they did not in all cases provide for allowances on account of weather interference or railroad errors and defaults. These contentions will be considered in the order stated.

Prior to 1915 defendants' tariffs provided that demurrage would be assessed on the basis of monthly periods, allowing excess credits earned in any one month to be applied to offset debits incurred during the next preceding month. This method of computation is referred to as the bimonthly average plan. In 1915, owing to complaints that this plan did not permit the application of excess credits earned during certain summer months to reduce the debits of earlier and later months, the carriers published tariffs providing in substance that for the purpose of computing detention of cars chargeable to the shipper the season of navigation would be divided into two periods, from the opening of navigation until July 31, inclusive, to be considered the first period, and from August 1 until the close of navigation to be considered the second period. Under this rule excess credit days earned in one period were not deducted from excess debit days incurred in the other period. The more liberal rule adopted in 1915 was discontinued the following year at all lake ports except Toledo, and at Toledo by the Pennsylvania Company, and the former bimonthly plan was restored. This action was taken, so defendants state, because experience showed that with the relaxation of pressure on the shippers detention of cars increased and more demurrage accrued.

Complainants contend that the entire season of navigation should be treated as one period for averaging car detention. This was also the contention of the complainants in *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.*, 18 I. C. C., 25; *Lynah & Read v. B. & O. R. R. Co.*, 18 I. C. C., 38; and *Red Ash Coal Co. v. C. R. R. Co. of N. J.*, 37 I. C. C., 460, except that in those cases an annual adjustment was

sought on shipments held at tidewater ports. On this point the Commission said in *Red Ash Coal Co. v. C. R. R. Co. of N. J.*, *supra*:

Some definite period at the end of which the average must be obtained and a balance struck must be prescribed. A calendar month is a natural division, and such division conforms to commercial usage and to the time statements of debits and credits are made in car accounting.

Nothing upon this record warrants a different conclusion with respect to lake cargo coal. The demurrage rules in force at the lake ports in 1915 and 1916 are not shown to have been unreasonable because they limited the period for averaging debits and credits to less than the entire season of navigation.

The contention next urged is that the free time allowance of five days is insufficient to permit the accumulation of a cargo at the ports and the unloading into vessels without the payment of demurrage. The practice is to order in a vessel after a certain number of cars have arrived at the port and while the balance of the cargo is in transit. It is therefore necessary to be able to estimate with some degree of certainty the date of arrival of those cars which have left the mines, but have not arrived at destination. Complainants allege that the primary cause of the detention at the ports is irregularity in the movement from the mines, which is a matter over which they have no control.

An average cargo is said to approximate 6,000 tons and to require about 135 cars. According to complainants, a cargo of that size would be accumulated in from 5 to 6 days if loaded promptly and moved through without delay. It appears, however, that the time in transit is frequently much longer. For example, of 55 cars shipped by the Island Creek Coal Sales Company on August 7, 1915, the first arrived in 9 days and 11 required 17 days. Four cars forwarded August 10, 1915, were in transit 24 days. The average time in transit of cars loaded by that company in any one day in 1915 varied from 4 days to 13 days. The Wyatt Coal Company reported an average time of 6.3 days on one grade of lake coal shipped during the season of 1915 from mines near Logan, W. Va., to Toledo. The movement in 1916 was apparently more irregular than in the preceding year, but this was due in part to the severe floods which occurred in August, 1916, interrupting traffic for several weeks. To this irregularity of movement and the fact that they are powerless to remedy it complainants attribute much of their difficulty in avoiding the assessment of demurrage.

Defendants, on the other hand, while admitting that there is some irregularity in moving the cars from the mines to the ports, allege that demurrage accrues chiefly by reason of complainants' failure to provide promptly the necessary vessels to move the cargoes. They show that three of the complainants, the Cabin Creek Coal Com-

pany, the Carbon Fuel Company, and the Island Creek Coal Sales Company, loaded more boats over the Cincinnati, Hamilton & Dayton Railway Company's docks at Toledo in 1916, in proportion to the number of cars handled, than in 1915, and that those companies, which had been charged demurrage in 1915, escaped demurrage in 1916. On the contrary, the Wyatt Coal Company in 1916 loaded fewer boats in proportion to the number of cars shipped than in the preceding year and was charged a greater amount of demurrage.

Defendants also contend that another cause for demurrage lies in the time taken in loading a cargo at the mines. A cargo consists usually of one grade of coal, and several grades, which must be kept separate, are shipped from the mines. An illustration of delay in loading is given in the case of the steamship *Hoyt*, loaded by the Island Creek Coal Sales Company at Sandusky, Ohio, in November, 1915, where 38 days elapsed between the date of the loading of the first and last cars. The average detention at the port for cars loaded into that vessel was 14.8 days. This was an extreme case, as similar information concerning cargoes moved in other vessels shows more rapid loading and less detention.

In *Tidewater Demurrage*, 46 I. C. C., 677, the Commission approved a proposed reduction of from 5 days to 3 days in the free time under the average agreement plan accorded on shipments of coal to tidewater terminals for transshipment by water. Irregularity of movement of the coal to the ports and the impossibility of accumulating a full cargo within the free time allowed were reasons urged by the protestants in that proceeding in opposition to the proposed reduction. While it was shown that demurrage had accrued on cars because of irregularity of movement over the lines of certain carriers, it was likewise shown that the average detention at the ports was less than the free time proposed. It appears from exhibits filed by defendants here that the average detention at the lake ports is less than the free time allowance of 5 days. The Pennsylvania Company reports an average detention for all lake ports which it serves of 4.53 days in 1915 and 3.52 days in 1916. The average detention shown by the Toledo & Ohio Central Railroad at Toledo was 4.04 days in 1915 and 4.25 days in 1916; by the Hocking Valley Railway at Toledo, 3.68 days in 1915 and 2.98 days in 1916; and by the Baltimore & Ohio Railroad at all ports, including the Cincinnati, Hamilton & Dayton Railroad at Toledo, 4.55 days in 1915 and 3.69 days in 1916.

It has not been shown upon this record that the free time allowance of 5 days in effect in 1915 and 1916 was an unreasonable limitation in defendants' demurrage rules.

The third question for determination concerns the alleged insufficiency of the notices of arrival. Defendants' tariffs in 1915 provided

that time would be computed from the first 7 a. m. after the day of arrival and after notice of arrival was sent or given to consignees. This provision was continued in 1916 except that the tariffs of the Toledo & Ohio Central and Hocking Valley railways provided that the notices should show car initials and numbers and the names or numbers of the various grades of coal. Complainants contend that the rules were unreasonable because they made no provision as to the form and contents of the notices, and that the notices were insufficient in that they did not specify the point of shipment and, if the car was transferred, the initial and number of the original car.

Notices to consignees of arrival of cars containing lake cargo coal, under the rules in effect in 1915 and 1916, showed only the car initials and numbers and the grade number of the coal. In some instances coal of similar grades originated at different mines and was consigned to the same grade number. If it was desired to load a vessel with coal from one particular mine the consignees were unable to do so without obtaining further information from the carriers, which was not always available.

Defendants contend that notification as to the point of shipment is unnecessary in the case of lake coal and state that no complaints have ever been received by them of insufficiency of the notice. It appears to be admitted, however, that if this information is desirable in the case of rail shipments it might reasonably be as desirable in the case of shipments intended for transshipment.

The national car demurrage rules provide that notice shall be sent or given consignees by the carrier's agent within 24 hours after the arrival of cars and billing at destination, such notice to contain the point of shipment, the car initials and numbers, and the contents, and, if transferred in transit, the initials and number of the original car. It may well be that if the question were here presented of prescribing rules for the future the Commission would hold that the carriers should furnish consignees the information which was lacking under the regulations in issue. Complainants have not shown, however, that they suffered any damage by reason of this lack of information, or that demurrage accrued which would otherwise have been avoided, and the Commission should therefore find that the rules have not been shown to have been unreasonable in this respect.

The contention last urged is that the rules were unreasonable because they made no provision for the cancellation of charges which accrued by reason of weather interference, railroad errors or defaults, or other causes not attributable to the shipper. It is argued that a delay to part of a cargo in transit, due to the carrier's fault, might prevent the unloading of that part already at the port, thus causing demurrage to accrue, or that a breakdown of the carrier's unloading machinery at the docks might have the same effect. No delays from

either cause during the years 1915 and 1916, however, are cited of record. Such delays as occurred, for which the shippers were in no measure responsible, other than the irregularities in the movement heretofore referred to, appear to have been due principally to floods and washouts or to embargoes placed against lake traffic because of congestion at the ports. The Toledo & Ohio Central Railway, Hocking Valley Railway, and Pennsylvania Company made provision in their 1916 rules for allowances for railroad errors which prevented proper tender or delivery, but there were no equivalent rules in force in the tariffs of the Baltimore & Ohio Railroad or Cincinnati, Hamilton & Dayton Railway.

Complaints have heretofore been made against the rules of certain of the defendants herein for failure to include provisions authorizing waiver of demurrage charges accruing because of weather interference. In *Jewett, Bigelow & Brooks v. C. H. & D. Ry. Co.*, 36 I. C. C., 655, part of a cargo en route to Toledo was delayed because of flood conditions, and rather than await the delayed cars complainants reconsigned or otherwise disposed of those already at the port. It was held that demurrage was properly assessed against these cars. This was also the holding in *Castner, Curran & Bullitt v. P. Co.*, 42 I. C. C., 3, which related to demurrage assessed on shipments of lake cargo coal held in cars at Sandusky, Ohio, for several days because of adverse weather conditions. It was said in that case that—

One of the purposes of the average demurrage plan is to provide for ordinary weather difficulties by allowing time credits gained by unloading cars prior to the expiration of the free time to be used to cancel detention debits.

Complainants' objections to the rules of defendants, as effective during the years 1915 and 1916, are without foundation, and the complaint should therefore be dismissed.

*AITCHISON, Commissioner:*

The foregoing is the report proposed by the examiner who heard the case and served upon the parties. Exceptions to each of the proposed conclusions were filed by the complainants, and oral argument was had before Division 1. No mistake of fact is alleged or shown. As pointed out by the examiner the rules in the defendant's tariffs do not conform to the national car demurrage rules in that they fail to provide for giving certain information on the notices of arrival of cars. No reason is shown for the tariffs not conforming to such rules, and we suggest to the carriers the advisability of having the tariffs amended accordingly. Upon consideration of the whole record, with special reference to the points raised by the exceptions, we are of opinion and so find that the conclusions proposed by the examiner are sound. The proposed report and findings are adopted as a part of this report.

On order dismissing the complaint will be entered.

No. 9667.

## OHIO VALLEY COAL OPERATORS ASSOCIATION

v.

## LOUISVILLE &amp; NASHVILLE RAILROAD COMPANY ET AL.

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*Submitted January 13, 1919. Decided February 13, 1919.*

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Upon complaint attacking as unreasonable and unduly prejudicial the rates on bituminous coal in carloads from mines in western Kentucky on the Louisville & Nashville Railroad and Illinois Central Railroad to points in Ohio, Indiana, and Michigan and seeking the establishment of joint rates to the territory north of the Ohio River, *Held*; That the rates from mines in western Kentucky on the Louisville & Nashville Railroad to Cincinnati, Ohio, are and for the future will be unduly prejudicial to the extent they exceed or may exceed the rates from mines on the Louisville & Nashville Railroad in the Jellico-Middlesboro group in eastern Kentucky and Tennessee by more than 15 cents per net ton; and that otherwise the rates complained of are not shown to violate the act.

*J. V. Norman* for complainant.

*William A. Northcutt* and *William Burger* for Louisville & Nashville Railroad Company; *A. P. Humburg* for Illinois Central Railroad Company; *William A. Eggers* and *C. H. Ashar* for Baltimore & Ohio Railroad Company; *Charles P. Stewart* for New York Central system; *James Stillwell* for Pennsylvania Company, Pennsylvania Terminal Railway Company, and Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; *R. H. May* for Chicago, Burlington & Quincy Railroad Company; and *G. H. Kummer* for Chicago & Eastern Illinois Railroad Company and its receiver.

*M. F. Gallagher*, *James A. Cooper, jr.*, and *E. B. Wilkinson* for Indiana coal operators, interveners.

*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATTCHISON.

Complainant is a voluntary association of coal operators whose membership comprises about 90 per cent of the coal operators controlling a like percentage of production of the coal on the lines of the Louisville & Nashville and Illinois Central railroads in western Kentucky. Its original complaint filed May 9, 1917, alleges that the

52 L. C. G.

rates maintained by defendants for the transportation of bituminous coal in carloads from mines in western Kentucky on the Louisville & Nashville Railroad to Cincinnati, Ohio, and to points north of the Ohio River within the states of Ohio, Michigan, and Indiana on and east of the lines of the Pennsylvania lines west of Pittsburgh and the Lake Erie & Western south from South Bend to, but not including, Indianapolis, are unreasonable and unduly prejudicial to mines in western Kentucky, and unduly preferential of mines located on the Louisville & Nashville Railroad in eastern Kentucky, Tennessee, and Virginia. By amended complaint filed November 27, 1917, it alleges that from mines located on the Illinois Central Railroad in western Kentucky to points east of the Indiana-Illinois state line in Indiana, Michigan, and Ohio, only a limited number of joint rates and through routes are maintained; that such joint rates as are in effect are unreasonable; and that the maintenance of joint rates from mines in southern Illinois on the line of the Illinois Central Railroad to points in northern Indiana and Ohio and the lower peninsula of Michigan, while failing to maintain joint rates from mines on the Illinois Central Railroad in western Kentucky subjects mines in western Kentucky to undue prejudice and disadvantage and gives the mines in southern Illinois undue preference and advantage.

Reasonable and nonprejudicial rates and through routes are asked.

The American Coal Mining Company and others operating mines in Indiana intervened in opposition to the complaint.

On June 25, 1918, subsequent to the hearing, the rates on coal from all the mines mentioned were increased as a result of General Order No. 28, issued by the Director General of Railroads. By amendment filed August 28, 1918, the Director General is made a party defendant and the relationship of the present increased rates is similarly assailed. The parties submitted the case upon the record as made at the original hearing.

Western Kentucky mines served by the Louisville & Nashville Railroad are located on the Henderson division, the Morganfield branch, the Owensboro & Nashville division, and Madisonville, Hartford & Eastern division of the Louisville & Nashville Railroad.

The Louisville & Nashville Railroad serves with its own rails mines in the western Kentucky coal fields and also mines in southeastern Kentucky, eastern Tennessee, and southwestern Virginia, hereinafter referred to as the eastern Kentucky fields. The Illinois Central serves western Kentucky mines and southern Illinois mines but not the southeastern Kentucky mines.

Coal from western Kentucky mines on the Louisville & Nashville destined to Cincinnati moves over that line to Owensboro, Ky., thence over the Louisville, Henderson & St. Louis Railway to Louisville

and again over the Louisville & Nashville to Cincinnati. The Louisville & Nashville has its own rails from western Kentucky mines to Cincinnati, but the distance over that line ranges from 10 to 20 per cent greater than that over the Owensboro route. To points north of the Ohio River the movement from western Kentucky is generally through Evansville, Ind., or Louisville, Ky., although there is a small movement through Cincinnati.

From the eastern Kentucky fields to Cincinnati coal moves over branch lines of the Louisville & Nashville to Corbin, Ky., or to Winchester, Ky., and thence over the Atlanta-Cincinnati main-line division. To points in central freight association territory the movement from those mines is through Louisville or Cincinnati.

The Louisville & Nashville Railroad publishes rates from both the western Kentucky and eastern Kentucky fields served by it to Cincinnati, the same rate applying from all mines in the western Kentucky field. The rates from eastern Kentucky to Cincinnati are subdivided into groups, the mines nearer destination taking lower rates than those more distant. The Middlesboro-Jellico group is the basic group in eastern Kentucky, the rates from other groups being made with relation to the rates from that group. Joint rates are maintained from the eastern Kentucky field to points throughout the territory in question north of the Ohio River. To points in that territory the eastern Kentucky mines take the same rates, except from the Wind Rock group in Tennessee and the Virginia group, from which the rates are higher than from the other mines. With few exceptions there are no joint rates from mines in western Kentucky on the Louisville & Nashville Railroad to the territory in question north of the Ohio River.

There are two groups of mines in western Kentucky on the Illinois Central Railroad, one extending from Henderson to Providence, the other between Princeton and Central City. The Illinois Central Railroad does not serve Cincinnati and there are no joint rates to that point from either of these groups. The short-line distance from these mines to Cincinnati is by way of the Illinois Central to Louisville, and the Louisville & Nashville beyond, an average distance of 280 miles, but it is said that the Baltimore & Ohio Southwestern Railroad is the preferred connection of the Illinois Central Railroad at Louisville for traffic to Cincinnati and that the average distance over the latter route is 300 miles.

The same rate applies from all the mines in western Kentucky on the Illinois Central to Louisville. The Illinois Central Railroad publishes rates from the Henderson-Providence group of mines through Evansville to points on its line between Evansville and Indianapolis, and to points on the Cleveland, Cincinnati, Chicago & St. Louis Rail-



way and New York Central Railroad from Davy, Ind., to Chicago, Ill. It also publishes rates by way of Louisville from the Princeton-Central City group of mines to points on the Chicago, Indianapolis & Louisville Railway from Smith, Ind., to Mitchell, Ind.; to points on the Baltimore & Ohio Southwestern Railroad from Lawrenceburg, Ind., to Vincennes, Ind.; to points on the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad from New Albany to Logansport, Ind., and from Springfield, Xenia, and Wilmington, Ohio, to Logansport, and to Indianapolis over the Cleveland, Cincinnati, Chicago & St. Louis Railway. To other points in the territory in question, including Michigan, there are no joint rates from mines on the Illinois Central Railroad in western Kentucky.

The Illinois Central Railroad publishes rates from southern Illinois mines to points on its lines in Indiana, but except in a few instances there are no joint rates from these mines to other points in Indiana or Ohio. Joint rates are maintained from those mines to points throughout the state of Michigan.

In normal times coal produced in western Kentucky is marketed in that territory reached by the Louisville & Nashville Railroad extending from Evansville, Louisville, and Owensboro to Decatur, Ala., and Nashville and Memphis, Tenn., and through Memphis to points in the Mississippi Valley and to points in the southwest. Since October 1, 1916, due to the abnormal conditions growing out of the war, it is stated that there has been from time to time a heavy tonnage of western Kentucky coal to Cincinnati and other Ohio and Indiana points.

For complainant it was testified that the coal industry in western Kentucky has been in a depressed condition for a number of years, and financially is practically in a bankrupt condition. During the period from 1912 to 1916, both inclusive, the production of coal in western Kentucky has fluctuated between approximately 7,700,000 and 8,500,000 tons, while during the same period the production in eastern Kentucky has steadily increased from about 8,500,000 tons to 17,500,000 tons. The western Kentucky mines are sufficiently equipped to produce 12 to 15 million tons per year.

It was also testified that western Kentucky coal is largely steam coal; that the territory to which it is confined by the present rate adjustment is practically a domestic consuming territory with no large industries; that it is consumed by railroads and a few small industrial plants and for four months in the winter by domestic consumers. It is said that the output of the western Kentucky mines is produced largely during the period from October 15 to March 1 and that during the balance of the year the production is only 35 to 50 per cent of capacity. On the other hand, it is said that the eastern

52 I. C. C.

Kentucky fields will show a continuous equal production the year round.

The principal controversy is with reference to rates from Louisville & Nashville mines in western Kentucky to Cincinnati and we will discuss that situation first. On June 15, 1917, the rates from the mines in eastern Kentucky were increased 15 cents per ton from the respective groups under authority of our decision in *The Fifteen Per Cent Case*, 45 I. C. C., 303, but no increase was made at that time from the western Kentucky coal field to Cincinnati. On June 25, 1918, under General Order No. 28, issued by the Director General, the rates from western Kentucky to Cincinnati were increased 45 cents per ton, which included the 15 cents authorized by *The Fifteen Per Cent Case*. At the same time the rates from the various groups in eastern Kentucky to Cincinnati were increased in various amounts, ranging from 35 cents to 50 cents per ton. On August 10, 1918, the rates from eastern Kentucky mines were adjusted so that they represent an increase of 35 cents from each group over the rates in effect prior to June 25, 1918. General Order No. 28 provided for an increase of 20 cents per ton on coal where the rate ranged from 50 to 99 cents per ton and 30 cents per ton where the rate ranged from \$1 to \$1.99 per ton. The increase of 35 cents per ton in the rates from eastern Kentucky to Cincinnati is not explained.

The following statement shows the rates in effect at the time of hearing, the present rates, distances, and ton-mile revenue from western Kentucky mines as compared with eastern Kentucky mines:

To Cincinnati, Ohio, from—	Number of mines.	Distance.			Rate per ton of 2,000 pounds.		Revenue per ton-mile for average distance.	
		Minimum.	Maximum.	Average.	Old rate.	New rate.	Old rate.	New rate.
<b>Western Kentucky mines; route L. &amp; N. R. R. to Owensboro, Ky., L. H. &amp; St. L. Ry. to Louisville, Ky., L. &amp; N. R. R. beyond:</b>		<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Mills.</i>
Henderson division and Morganfield branch.....	28	273	315	286.6	145	190	5.06	6.63
Owensboro & Nashville division..	16	242	272	261.3	145	190	5.56	7.27
M. H. & E. division.....	2	258	259	258.5	145	190	5.60	7.35
All mines.....	46	242	315	276.9	145	190	5.24	6.87
<b>Eastern and southeastern Kentucky, southwest Virginia, and Tennessee mines; route L. &amp; N. R. R. direct:</b>								
Group 1, Benham group.....	30	239	279	258.9	115	150	4.43	5.79
Group 1, Wind Rock group.....	3	274	278	276.3	115	150	4.16	5.43
Group 2, La Follette group.....	12	236	239	230.8	110	145	4.77	6.28
Group 3, Jellico-Middlesboro group.....	129	191	242	221.4	105	140	4.74	6.32
Group 4, Pittsburg group.....	17	147	184	167.4	95	120	5.68	7.77
Group 5, McRoberts group.....	25	238	280	273.0	115	150	4.21	5.49
Group 6, Hazard group.....	41	178	236	217.5	105	140	4.83	6.44
Group 7, Heidelberg group.....	5	150	156	152.8	105	140	6.87	9.16
Group 9, Virginia mines.....	30	277	313	294.3	120	155	4.08	5.27

For complainant it was testified that under the abnormal conditions which have existed since September, 1916, due to the war, a considerable tonnage of coal from the western Kentucky fields has been shipped to Cincinnati; that the coal has given general satisfaction; that from the viewpoint of distance, Cincinnati is a natural market for western Kentucky coal; and that under a proper adjustment of rates western Kentucky coal will find a market at that point in normal times.

Complainant calls attention to the fact that while the average distance from the mines in western Kentucky to Cincinnati is approximately the same as that from the Wind Rock group and somewhat less than that from the Virginia group, in the eastern Kentucky field, the rates from western Kentucky are higher than from either the Wind Rock or the Virginia group.

The present adjustment of rates to Cincinnati from western Kentucky and from eastern Kentucky is defended by the Louisville & Nashville Railroad, hereinafter referred to as defendant, on the ground that the service of transportation from the two fields is performed under circumstances and conditions that are substantially dissimilar, and detailed testimony as to conditions of operation from western Kentucky mines was given.

Defendant selects four points of origin each in the western and eastern Kentucky fields as typical of each field and shows the tonnage rating of the type of engine used in the Kentucky coal fields over successive sections of the lines from the two coal fields to Latonia, Ky., a point on the south bank of the Ohio River opposite Cincinnati, where the lines from the two fields converge and from this computes the number of train-miles which the type of engine mentioned must cover to equal its haul over an ideal track with its full rating of 5,600 tons. The average distance from the points selected to Latonia are 270.5 miles from the western Kentucky fields and 243.5 miles from the eastern Kentucky fields. The average equated train-miles are 1,186.73 from selected points in the western Kentucky fields and 881.66 from those in the eastern fields, the former being approximately 35 per cent greater than the latter. Defendant argues that it automatically follows that the transportation cost to lay down a car of coal in Cincinnati from the western Kentucky field is greater than the same operation from the eastern Kentucky field in the same degree or ratio as the train-mile distance from the western Kentucky field is greater than that from the eastern Kentucky field.

Complainant insists that these comparisons, unaccompanied as they are by any showing as to ratio of operating expense to operating revenue, investment, return on investment, and cost, are valueless

52 I. C. C.

for rate-making purposes. It is argued that it may well be that the ratio of operating expense is lower on the line where the tonnage rating is less than on the line where it is higher. Further criticism is made of the comparisons on the ground that the aggregate actual distance from the selected western Kentucky field points is 1,082 miles while from the southeastern Kentucky field points it is only 974 miles. It is further contended by complainant that the divisions of the total haul would affect materially the equated train-miles. For example, it is urged that the tonnage rating from Lagrange to Latonia, a distance of 77 miles, on the route from western Kentucky, is fixed by defendant at 800 tons, and that perhaps only 10 miles of the distance between these points should have such a low rating while the other 67 miles should have a much higher rating, in which case the equated mileage for the total distance should be lower than fixed. Defendants' witness however testified that the divisions were made at points where trains were broken up and the tonnage of the trains adjusted to the ratings shown for the various sections of the line.

On behalf of defendant it is testified that the movement from western Kentucky to Louisville, Cincinnati, and beyond is very much disjointed and requires an unusual amount of terminal and branch-line service. On account of the large volume of coal originating on the Henderson division in the western Kentucky field it is practicable to gather up coal in mine-run service there and three assembly points have been established on that division. The same is true to some extent on the Morganfield branch. On the other branches in this field it is not practicable to operate mine-run or assembly service and road-haul trains stop en route to distribute empties and pick up loaded cars at mines on these branches, thus, it is urged by defendants, adding materially to the cost of transportation.

It is further urged by defendants that in the movement from the mines in western Kentucky to Cincinnati unusual grades and curves are encountered, particularly from Louisville to Cincinnati, and costly terminal service at both Louisville and Cincinnati is required. It is said that after arrival of the coal in Louisville it requires from 3.5 to 6 miles switching service by defendant to place it in trains for Cincinnati.

Defendant has practically no terminal facilities for delivery of coal at Cincinnati and delivery there ordinarily must be made by other carriers. When the delivery must be made by any other than the Norfolk & Western Railway, Pennsylvania lines, or Cincinnati, Lebanon & Northern Railway, the bridge from Covington, Ky., to Cincinnati must be used, instead of that from Newport, Ky., to Cincinnati and in the interest of economy all traffic for Cincinnati

connections over the Covington Bridge is assembled in defendants' yards at DeCoursey, Ky. Trains containing coal from western Kentucky to Cincinnati are broken up at Latonia, Ky., and the cars switched 3 miles to the DeCoursey yards, where they are made up into trains for movement over the Covington Bridge for delivery to Cincinnati delivery lines. DeCoursey is intermediate from the eastern Kentucky coal field to Cincinnati and coal from the latter field to Cincinnati escapes the terminal handling at Latonia.

It was testified for defendants that the rate from western Kentucky to Cincinnati has a very wide terminal application in the Cincinnati switching limits necessitating absorption ranging from \$2 per car to as high as \$17.50 per car, which reduces the ton-mile yield on the traffic from the western Kentucky field. The rates from eastern Kentucky to Cincinnati apparently have as wide application at Cincinnati as the rate from western Kentucky.

For defendant it was testified that its line from Louisville to Cincinnati is simply a series of curves and excessive grades; that starting out from Louisville a grade of 52.2 feet to the mile is encountered which prevails for 2.5 miles. From a point 8 miles beyond Louisville the grades are 48.8, 50.6, 50.3, and 45.3 feet to the mile for the next 5 miles. After passing Lagrange, Ky., 27 miles from Louisville, the grade against the load reaches 60 feet per mile, the summit being at Pendleton, Ky., 33 miles from Louisville. At Sulphur, Ky., 36 miles from Louisville, the grade again begins to rise and reaches a maximum of 60.7 feet to the mile at Campbellsburg, Ky., 41 miles from Louisville. Just beyond Glencoe, 71 miles beyond Louisville, there is another grade of 60 feet to the mile for 3 miles. At Zion, Ky., 78 miles from Louisville, another grade starts and continues with slight variation to mile 85, the grade ranging from 43.8 to 60 feet per mile.

It is urged on behalf of defendant that its rates from the eastern Kentucky coal fields to Cincinnati are brought about by intense competition at that point with both water and rail coal. Complainant admits this, but urges that there is no showing of any such difference in transportation conditions as to justify the present adjustment of rates between these two fields.

Defendant urges that the character and grade of western Kentucky coal prevents its successful competition with other coals reaching the Cincinnati market. It is said that western Kentucky coal is surrounded on all sides by the superior coals mined in Indiana, Illinois, eastern Kentucky, Georgia, Alabama, and even the water-borne coal from Pennsylvania and West Virginia, which naturally confines western Kentucky coal to the territory above described.

52 I. C. C.

Defendant insists that it is due only to the abnormal condition created by the war when consumers were glad to get any kind of coal that there was any movement from the western fields to Cincinnati; and that under normal conditions western Kentucky coal, due to its inferior quality, could not move to Cincinnati, and in support of this filed a statement in which is summarized statements of several large consumers at Cincinnati in October and November, 1917, to the effect that under normal conditions these consumers prefer coal from other fields.

Defendants' witness testified that the marked increase in the production of coal in eastern Kentucky over that from western Kentucky is due to the difference in the quality of the coal from the two fields; the fact that western Kentucky fields are very old and have progressed further toward their maximum development than the eastern Kentucky fields, which are comparatively new and in which new railroad construction has been made and new mines opened up; and the further fact that there are six times as many mines in the eastern Kentucky field as in the western Kentucky field.

In comparing the operating conditions from western and eastern Kentucky fields defendant has disregarded the mines in the Virginia group. It is practically admitted by defendant that the conditions surrounding the transportation of coal from the Virginia group are more difficult than those from the western Kentucky fields. It is urged however that the rate from the Virginia group to Cincinnati is too low and does not afford reasonable compensation for the extraordinary services required in transportation from those mines. The rates from the Virginia group have been before us in one phase or another since January, 1911, and the present differential in those rates over the rates from the Middlesboro-Jellico district were fixed by us in *Stonega Coke & Coal Co. v L. & N. R. R. Co.*, 39 I. C. C., 523. Out of the rate in effect at the time of the hearing from the Virginia group to Cincinnati, the defendant paid the Interstate Railroad, which serves a part of that field, 15 cents per ton under an order of the Commission. *Louisville & Nashville R. R. Coal and Coke Rates*, 50 I. C. C., 54.

No substantial evidence was offered by complainant to support the allegations of unreasonableness or undue prejudice with respect to the rates from mines on the Illinois Central Railroad in western Kentucky to Cincinnati.

The interveners say they are not materially interested in the rates from western Kentucky to Cincinnati.

52 I. C. C.

## RATES TO POINTS NORTH OF THE OHIO RIVER.

At the hearing, complainant withdrew its allegation of unreasonableness with respect to any joint rate then in effect from the western Kentucky field to the territory north of the Ohio River.

Complainant's principal witness testified that complainant was principally interested in the rates to Cincinnati and points in Indiana near the Ohio River but was unable to specify particularly the points to which joint rates were desired. A rate witness for complainant offered a statement showing the rates and distances from the eastern Kentucky field to a number of points in Indiana, Ohio, and Michigan, and the rates and distances from southern Illinois mines to the same destinations where joint rates were in effect from southern Illinois and also the distances from the western Kentucky field to the same points but the facts of record afford no basis for determining what would be just and reasonable rates from western Kentucky to the territory north of the Ohio River. Other than showing that the Illinois Central applies the same rate from all the western Kentucky mines served by it to Louisville, complainant offered no evidence to support its contention that the same joint rates in effect from those mines to points in Indiana and Ohio should apply from all the western Kentucky mines on the Illinois Central.

The relationship between the rates from western Kentucky and southern Illinois mines on the Illinois Central Railroad to Chicago, Ill., is now pending before the Commission in docket No. 9517, *Ohio Valley Coal Operators Asso. v. I. C. R. R. Co.*, and on behalf of the Illinois Central it is said that the decision in that case will fix the proper relationship in the rates between the western Kentucky field and the southern Illinois field to Michigan.

In its brief the Louisville & Nashville Railroad calls attention to the fact that the United States Fuel Administration since the filing of the complaint has announced a zone system to govern the distribution of bituminous coal during the year beginning April 1, 1918, under which western Kentucky coal is not permitted to be shipped to any destination in Ohio or Michigan or in Indiana east of a line from Evansville to South Bend, and urges that the case should therefore be dismissed. The duration of this zone system is uncertain and should not prevent the Commission from fixing what are deemed as just and reasonable rates.

**MEYER, Commissioner.**

The foregoing is the report of the examiner who conducted the hearing of this case and proposed the following conclusions:

That the rates from mines on the Louisville & Nashville Railroad in western Kentucky to Cincinnati have not been shown to have been

52 I. C. C.

or to be unreasonable in and of themselves, but that such rates are and for the future will be unduly prejudicial to the extent they exceed or may exceed the rates from the Jellico-Middlesboro group in eastern Kentucky and Tennessee to Cincinnati by more than 15 cents per ton of 2,000 pounds; and that otherwise the rates complained of are not shown to violate the act.

Exceptions were filed by defendants, which attack, primarily, the finding of undue prejudice in favor of the Jellico-Middlesboro group; and which point to no substantial error in the statement of facts.

The defendants contend that there is no competitive condition which would warrant the establishment of the proposed relation between the eastern and western Kentucky fields; and they stress certain facts of record to show that the weight of the evidence does not support the conclusion.

Upon consideration of the contentions urged and of all the facts of record, the Commission adopts as its own the report and conclusions of the examiner. An order will be entered accordingly.

52 I. C. C.



No. 9658.

PUBLIC UTILITIES COMMISSION FOR THE STATE OF  
KANSAS

v.

ABILENE & SOUTHERN RAILWAY COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos.  
631, 697, AND 701.

*Submitted January 16, 1918. Decided February 13, 1919.*

1. The rates on fresh apples, carloads, from both the northeastern and valley districts of Kansas, to Oklahoma and Texas, are not shown to be either intrinsically unreasonable or unduly preferential of either Arkansas or Colorado to the prejudice and disadvantage of Kansas.
2. There are, however, marked inequalities between the Kansas-Texas adjustment and the rates contemporaneously maintained for distances over 600 miles from New Mexico to Texas, which the defendant carriers should promptly remove.
3. Since the fourth section applications involve the rates on all traffic, including the general class scales, and not only apple rates, action on them will be deferred until a full hearing has been had of the whole question in its broader aspect.

*A. E. Helm* and *W. R. Scott* for complainant.

*Wallace T. Hughes* and *J. C. Gutsch* for the Chicago, Rock Island & Pacific Railway Company and the Chicago, Rock Island & Gulf Railway Company; *Fred G. Wright* and *F. B. Clark* for the Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company and *B. F. Bush*, receiver for both companies; *B. F. E. Marsh* for the Atchison, Topeka & Santa Fe Railway Company; the Gulf, Colorado & Santa Fe Railway Company; the Panhandle & Santa Fe Railway Company; the Texas & Pacific Railway Company; and the Rio Grande, El Paso & Santa Fe Railroad Company; *Robert N. Nash* for the St. Louis-San Francisco Railway Company; *R. D. Williams* for the Missouri, Kansas & Texas Railway Company; the Missouri, Kansas & Texas Railway Company of Texas; the Wichita Falls & Northwestern Railway Company and receivers.

52 I. C. C.

## REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

McCHORD, *Commissioner*:

This complaint was the subject of a proposed report by the examiner, which was served on the parties. Exceptions to the proposed conclusions were filed by the complainant. We have examined the evidence and noted the exceptions to the report. Since December 28, 1917, the defendants have been operated under federal control. The complainant was afforded an opportunity to make the Director General of Railroads a party defendant to the proceeding by amendment, but has not done so. The case will be disposed of on the record as made. The rates named in the report are those in effect on the date the case was submitted. The report of the examiner with certain unimportant changes is adopted as to facts and conclusions.

Apple growers in the state of Kansas, through the public utilities commission of that state, here complain that the rates on fresh apples, carloads, from Kansas producing sections to Arkansas, Oklahoma, and Texas, are both unreasonable and unduly prejudicial. Behind this customary pleading, however, the real difficulty is shown to be the inability of the growers readily to market a seasonable glut of lower grade apples, known to the trade as "seconds;" and believing that transportation charges are at least a contributing cause, they seek a more evenly balanced rate adjustment as between their producing districts and those of their competitors in other states. Complaint against the Kansas-Arkansas rates was withdrawn at the hearing.

Notwithstanding that only a comparatively small part of a vast acreage of Kansas soil ideally adapted to apple raising is set in orchards, the annual production of that state is far in excess of its domestic requirements. No difficulty is experienced in marketing the first-grade apples, or "tops," which, although the same in quality as the "seconds," become choice because of their size and appearance. These apples find ready markets in all parts of the country, and stand up well in competition with the products of other states. The "seconds" are not so readily disposed of. But the Kansas growers are not alone in this difficulty. The growers of other states, such as Washington, Oregon, Idaho, and Colorado, are confronted with the same problem, and find it necessary to send their "seconds" on consignment toward prospective markets, including Texas and Oklahoma, with the hope of realizing something more than cost. Losses are not infrequent, and the Kansas growers hesitate to assume that risk under what they regard to be comparatively high freight rates.

As a consequence, varying with the supply and demand, there is more or less waste of the Kansas product.

No complaint comes from dealers in Oklahoma and Texas at the markets to which access is more freely sought. They buy apples delivered from all growers who enter there at the best prices obtainable; and, although the doors to these markets are not closed to Kansas growers, they feel that their geographical location should permit them, providing they are at no disadvantage in freight rates, to share more largely in the trade on a profitable basis. One of their number, well qualified by long experience and remarkably frank in his exposition of the whole situation, stated of record that " \* \* \* we can not have any legitimate complaint if we consider that our rate is on a parity with another section whose market is restricted in a similar way. \* \* \*."

In quite the same spirit the defendant carriers disavowed any intention of unduly favoring other sections to the prejudice and disadvantage of Kansas, and expressed willingness promptly to remove any inequalities found to exist. Nevertheless, it is their contention that the apple rates are now on a low plane, and should not be reduced.

Apart from scattered orchards, there are two principal apple-producing sections in the state of Kansas, one in the northeastern corner and the other in the south central part, herein designated, respectively, the northeastern district and the valley district. The counties of Atchison, Leavenworth, Jefferson, Jackson, Doniphan, Nemaha, Wyandotte, and Brown are representative of the northeastern district, which is but a small section of a large producing area that embraces southeastern Nebraska, southwestern Iowa, and northwestern Missouri. The valley district is comprised principally of the counties of Reno, Sedgwick, Sumner, Stafford, and Rice.

Apples are packed either in 3-bushel barrels or 1-bushel boxes. The bottom grades, or "cider apples," are shipped in bulk, and the tendency is to ship "seconds" in that way under favorable conditions. The particular traffic here under consideration, however, is packed in boxes and generally transported in refrigerator cars. A bushel, depending upon the variety of apples, weighs from 38 to 50 pounds. For transportation purposes a packed box is estimated to weigh 50 pounds. The average carload is between 26,000 and 28,000 pounds, 27,000 pounds being used here as representative. According to reports of the United States Department of Agriculture, the production price of Kansas apples was \$1.30 a bushel in 1916 and 76 cents in 1915. The prices vary with demand and supply, reaching the maximum in the spring months and the minimum in the winter. These figures show that a change in the freight rate of 10

52 I. C. C.

cents a hundred would affect the production price to the extent of about 5 cents a bushel, which would mean approximately \$27 a car. Such a reduction in the rates from the valley district was suggested by one of the principal growers.

Apples are rated fifth class in the western classification. Under established exceptions class B rates are generally maintained from Kansas to Oklahoma, and class C rates from points on the Atchison, Topeka & Santa Fe to points on the Panhandle & Santa Fe Railway in Texas. These exceptions are applicable from both the northeastern and valley districts. From both districts to Texas common points, including the Dallas-Fort Worth group, and also to Texarkana, specific commodity rates are maintained. The commodity rates are less than fifth class and also less than class B. The fifth-class rating, in its application to apples, was sustained in *Investigation and Suspension Dockets 60 and 60-A*, 24 I. C. C., 38; and *Public Service Commission of Missouri v. Wabash R. R. Co.*, 37 I. C. C., 297.

Rates are stated in cents per 100 pounds, and car-mile earnings, for comparative purposes, are based upon an average loading of 27,000 pounds. The Kansas-Texas adjustment, which will be considered first, is shown in the following table:

*Kansas-Texas adjustment.*

To Texas.	Rate from northeastern district, 62 cents.			Rate from valley district, 55 cents.		
	Average miles.	Average ton-mile revenue.	Average car-mile revenue.	Average miles.	Average ton-mile revenue.	Average car-mile revenue.
		<i>Mills.</i>	<i>Cents.</i>		<i>Mills.</i>	<i>Cents.</i>
Fort Worth.....	561	22.1	29.8	399	27.6	37.2
Waco.....	661	18.8	25.3	512	21.5	29
Jacksonville.....	701	17.7	23.9	596	18.8	25.3
San Antonio.....	838	14.8	20	676	16.3	22
Galveston.....	891	13.9	18.8	735	15	20.2
Beaumont.....	881	14.1	19	761	14.5	19.5

From Wichita, in the valley district, which is intermediate to Kansas City, the rate to Fort Worth is 52 cents.

From Kansas.	To Texarkana, Tex.-Ark.			
	Miles.	Rate.	Ton-mile revenue.	Car-mile revenue.
		<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Atchison (northeastern district).....	535	44	16.5	22.2
Topeka (northeastern district).....	555	44	15.9	21.4
Wichita (valley district).....	464	44	19	25.6
Hutchinson (valley district).....	565	44	15.6	21.

The 62-cent rate from the northeastern district is the old St. Louis-Texas common-point class C rate; while the 55-cent rate from the valley district was voluntarily established by the defendant carriers following a conference with the growers in July, 1911, the purpose being to make the adjustment from the valley district consistent with that prescribed in *Ozark Fruit Growers Assn. v. St. L. & S. F. R. R. Co.*, 16 I. C. C., 134. The principal contentions of the complainant are that these rates are unreasonable as compared with the apple rates contemporaneously maintained to Texas (a) from northwestern Arkansas (b) from the Pecos Valley of New Mexico, and (c) from Grand Junction, Colo.; and also as compared with the rates from (d) Grand Junction to the Missouri River, and (e) from Kansas to Louisiana. On precisely the same ground the rates are alleged to be unduly preferential of New Mexico, Colorado, Arkansas, and other states. Comparative illustrations follow:

*Comparing Kansas-Texas with Arkansas and New Mexico-Texas.*

To Texas.	From Atchison, Kans., north-eastern district. Rate 62 cents.			From Wichita, Kans., valley district. Rate 55 cents.			From Gentry and Fayetteville, Ark. Rate 45 cents.			From Roswell, N. Mex. Rate 44 cents.		
	Miles.	Ton-mile revenue.	Car-mile revenue.	Miles.	Ton-mile revenue.	Car-mile revenue.	Miles.	Ton-mile revenue.	Car-mile revenue.	Miles.	Ton-mile revenue.	Car-mile revenue.
Fort Worth <sup>1</sup> .....	568	<i>Mills.</i> 21.8	<i>Cents.</i> 29.5	376	<i>Mills.</i> 27.7	<i>Cents.</i> 37.3	436	<i>Mills.</i> 20.6	<i>Cents.</i> 27.8	699	<i>Mills.</i> 12.6	<i>Cents.</i> 17
Waco.....	690	18	24.3	498	22.1	29.7	485	18.6	25	616	14.3	19.3
Jacksonville.....	770	16.1	21.7	578	19	25.7	458	19.7	26.5	753	11.7	15.8
San Antonio.....	845	14.7	19.8	653	16.9	22.7	665	13.5	18.3	727	12.1	16.3
Galveston.....	914	13.6	18.3	722	15.2	20.6	630	14.3	19.3	791	11.1	15
Beaumont.....	946	13.1	17.7	754	14.6	19.7	601	15	20.2	822	10.7	14.

<sup>1</sup> Rate from Wichita, 52 cents.

*Comparing Kansas-Texas with Colorado-Texas.*

From—	To Texas points shown in the preceding table.			
	Average miles.	Average rate.	Average ton-mile revenue.	Average car-mile revenue.
Atchison, Kans.....	727	<i>Cents.</i> 62	<i>Mills.</i> 17	<i>Cents.</i> 23
Wichita, Kans.....	560	55	19.6	26.5
Grand Junction, Colo.....	1,182	75	12.7	17.1

52 I. C. C.

*Kansas-Louisiana rates.*

To—	From Atchison.			From Wichita.		
	Miles.	Rate.	Ton-mile revenue.	Miles.	Rate.	Ton-mile revenue.
		<i>Cents.</i>	<i>Mills.</i>		<i>Cents.</i>	<i>Mills.</i>
Alexandria, La.....	730	45	12.3	760	45	11.8
De Ridder, La.....	736	50	13.6	666	50	15
Lake Charles, La.....	788	50	12.7	718	50	13.9
Monroe, La.....	703	45	12.8	733	45	12.3
New Iberia, La.....	881	51	11.6	811	51	12.6
Ruston, La.....	672	45	13.4	702	45	12.9
Shreveport, La.....	607	45	14.8	637	45	14.1
Texarkana, Tex.-Ark.....	535	44	16.5	464	44	19
New Orleans, La.....	914	34	7.4	944	49	10.4

For distances more than 600 miles the New Mexico growers unquestionably have lower rates, both in volume and in the charges per ton-mile and car-mile, than the Kansas growers in reaching the Texas points selected for comparative purposes by the complainant. The defendants, however, have under consideration an increase in the New Mexico-Texas adjustment, which, when first established, is said to have been influenced by low state rates in Texas. To show that for shorter distances the New Mexico growers have no advantage in the charges per ton-mile and car-mile, the defendants make the following comparisons:

To Texas.	From Roswell, N. Mex.				From Hutchinson, Kans. (valley district).			
	Miles.	Rate.	Ton-mile.	Car-mile.	Miles.	Rate.	Ton-mile.	Car-mile.
		<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Amarillo.....	211	25	23.7	32	341	43	24.6	33.2
Higgins.....	336	40	23.7	32.1				
Sweetwater.....	328	42	25.6	34.6				
Plainview.....	251	38.5	30.7	41.4	416	45	21.6	29.2
Lubbock.....	206	36	35	47.2	463	47	20.3	27.4
La Mesa.....	243	41	33.7	45.5	533	49	18.4	24.8

From Colorado to Texas, for longer distances, the charges per ton-mile and car-mile, while lower than from Kansas, are not out of reasonable proportion. In volume the Colorado grower pays a rate appreciably higher than that paid by the Kansas grower.

The defendants assert that the adjustment from Kansas to Louisiana is depressed by low rates maintained over the short-line route from Kansas City, Mo., through Texarkana; and that this same influence holds down the rates to Texarkana over circuitous routes through Texas, and is responsible for departures from the fourth section, which later will receive attention.

Back as far as April, 1909, in *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.*, *supra*, the following maximum rates were prescribed from Missouri and Arkansas to Texas:

To Texas.	From Springfield, Mo. <sup>1</sup> Rate 55 cents.			From Van Buren, Ark. <sup>1</sup> rate 45 cents		
	Miles.	Ton-mile.	Car-mile.	Miles.	Ton-mile.	Car-mile.
Mineola.....	448	<i>Mills.</i> 24.5	<i>Cents.</i> 33.1	330	<i>Mills.</i> 27.3	<i>Cents.</i> 36.9
Dallas.....	526	20.9	28.2	342	26.3	35.5
Waco.....	626	17.6	23.7	442	20.4	27.4
San Antonio.....	814	13.5	18.2	630	14.3	19.3
Average.. ..	603	18.2	24.6	436	20.6	27.9

<sup>1</sup> Representative of groups.

The average yield of the rates from Kansas to Texas common points, as shown by the complainant, appears to be:

*General average, Kansas to Texas.*

From northeastern district, 62-cent rate.			From valley district, 55-cent rate.		
Miles	Ton-mile.	Car-mile.	Miles.	Ton-mile.	Car-mile.
772	<i>Mills.</i> 16.06	<i>Cents.</i> 21.7	634	<i>Mills.</i> 17.35	<i>Cents.</i> 23.4

Obviously the Kansas-Texas adjustment, as an average and in proportion to distance, is on a level no higher than the maximum rates prescribed over eight years ago from Missouri and Arkansas to Texas, when the cost of transportation and the price of apples were less than they are to-day.

**KANSAS-OKLAHOMA ADJUSTMENT.**

Class B distance rates, observing as a maximum the Kansas City class B rates, are maintained on apples from both of the Kansas producing districts to the northerly part of Oklahoma. Toward the center of the state this distance scale runs into a group adjustment, and to some extent the territory of origin is also grouped. For example, from what is known as "Kansas City territory," including such points as Troy and Horton in the northeastern district, the group rates to southern Oklahoma range from 49 to 59 cents. To the same section of Oklahoma from the valley district, however, the maximum rate is 45 cents, which, along with the rates to Texas, was put in following the conference in 1911 between the carriers and the

52 I. C. C.

**Kansas growers.** There also is in effect a rate of 30 cents on "apples in bulk" from the valley district to many important points in Oklahoma. In its practical application for distances over 300 miles, and in many instances for distances even less, the distance scale first mentioned, which is shown in the following table, gives way either to the maximum class B rate from Kansas City, the group rates from "Kansas City territory," or the maximum of 45 cents from the valley district:

*Kansas to Oklahoma class B distance scale.*

Miles.	Rates.	Miles.	Rates.
25	11	200	38
50	16	250	43
75	21	300	48
100	24	350	52
150	31	400	55

Using the Kansas-Oklahoma adjustment as a whole, and urging substantially the same contentions as were made in respect of the Kansas-Texas adjustment, the complainant makes the following comparisons:

From—	Average to 12 representative Oklahoma points.			
	Miles.	Rates.	Ton-mile.	Car-mile.
		<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Atchison, Kans. <sup>1</sup> .....	362	38.7	21.4	28.8
Wichita, Kans. <sup>2</sup> .....	177	30.2	34.1	45.1
Roswell, N. Mex.....	609	45	14.8	20
<sup>1</sup> Northeastern district.		<sup>2</sup> Valley district.		

From—	Average to 14 representative Oklahoma points.			
	Miles.	Rates.	Ton-mile.	Car-mile.
		<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Atchison, Kans. <sup>1</sup> .....	363	38.7	21.3	28.8
Wichita, Kans. <sup>2</sup> .....	189	31.5	33.3	45
Grand Junction, Colo.....	923	75	16.3	21.9
Canon City, Colo.....	670	62	18.5	25
<sup>1</sup> Northeastern district.		<sup>2</sup> Valley district.		

In *Ozark Fruit Growers' Asso. v. St. L. & S. F. R. R. Co.*, *supra*, rates were prescribed from Missouri and Arkansas to Oklahoma as follows:

52 I. C. C.



	Rates.	Per ton-mile.	Per car-mile.
	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
220 miles and under 320 miles.....	40	25 to 36.4	33.7 to 49.1
320 miles and over.....	45	22.5 to 28.1	30.4 to 38

Here, too, as shown in the Kansas-Texas adjustment, it is clear that the present rates from Kansas to Oklahoma are not on a level appreciably higher than the rates prescribed in 1909 from Missouri and Arkansas to Oklahoma.

#### AFFECTING BOTH ADJUSTMENTS.

As affecting the whole situation, and in further support of its allegations of unreasonableness, the complainant directs attention to (a) the application of class C rates, instead of class B, of the Kansas-Oklahoma distance scale, to apples from points on the Atchison, Topeka & Santa Fe in Kansas to points in Texas on the Panhandle & Santa Fe; (b) the Oklahoma-Texas class scale prescribed in *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, 26 I. C. C., 520, 523, which is lower than the Kansas-Oklahoma distance scale; (c) the inconsistency in the relation between classes B and C on the one hand and first class on the other hand, in the Kansas-Oklahoma rates, as compared with the relation between these same classes in the Iowa-Nebraska scale, *Iowa State Board of Railroad Commissioners v. A. E. R. R. Co.*, 28 I. C. C., 193, and in the Missouri-Nebraska scale, *The Missouri River-Nebraska Cases*, 40 I. C. C., 201; (d) the uneven grading of rates, due largely to "humps," where state and interstate scales meet, and where the distance scales run into group adjustments; and (e) rates prescribed by the Commission in the general territory here involved on cattle, packing-house products, fresh meat, and cottonseed meal, all of which are comparatively lower than the apple rates. Although there are inconsistencies to be found in some of the several considerations just mentioned, none of them are of a nature that shows the apple rates here under attack to be either unreasonable or unduly prejudicial or out of line with the general adjustment. These inconsistencies, where they appear to exist, affect class-rate adjustments as a whole, and may not properly be dealt with on this record.

As bearing upon the alleged prejudicial effect of the rates, one of the principal growers stated of record that in Texas and Oklahoma the Kansas apple meets steady competition, not only from Arkansas, New Mexico, and Colorado, but also from Utah, Idaho, Oregon, and Washington, running into "thousands of cars" of chiefly second-

52 I. C. C.

grade fruit. Confirming this testimony the defendants show that, at freight rates ranging from 62 cents to \$1, the northwestern states are the main source of supply for some of the important Texas and Oklahoma markets. If this is a disadvantage to the Kansas grower, obviously it is not due to the freight rate adjustment, which is much lower from Kansas than from the northwest.

#### FOURTH SECTION DEPARTURES.

The parts of Fourth Section Applications Nos. 631, 697, and 701, filed by F. A. Leland, agent, by which the defendant carriers request authority to continue to charge for the transportation of apples, fresh or green, in carloads, from points in Kansas to points in Texas, including Texarkana, rates which are lower than the rates contemporaneously maintained on like traffic from or to intermediate points, were heard with the complaint.

Broadly speaking, the carriers forming the more circuitous routes from Kansas south through Oklahoma and the Dallas-Fort Worth group to points near Texarkana in the northeasterly corner of Texas, desire to meet the rates maintained over the short-line route running directly south from Kansas City through Texarkana, without being compelled to maintain the same rates at intermediate points on their lines in higher rated territory. The short-line rates from Kansas City, Mo., to Texarkana are themselves depressed by the rates contemporaneously maintained from St. Louis, which it is asserted are in turn kept at a low level by water competition in the Mississippi Valley and through New Orleans. Both the Kansas districts and the Texas destinations are affected by these applications. For example, depending upon the competitive rate adjustment over the available routes to the same destination in northeast Texas, a more distant Kansas point may be rated lower than one that is nearer. Practically the same situation arises in respect to other sections of Texas which are reached from Kansas by several different routes. To illustrate, one route of the Santa Fe, in reaching Texas common points, passes through the higher rated differential territory, and for practical operating purposes the carriers seek permission to continue the operation of that route without being required to maintain Texas common-point rates to points in differential territory.

These situations affect not only apple rates, but the rates on all other commodities as well, including the general class scales. The fourth section applications are fully as broad, but have been heard only to the extent that they involve apple rates. To determine the merits of the whole question in its larger scope, as affecting the rates on all traffic, a further hearing will be necessary; therefore, instead

of undertaking here to pass upon only the portions of the applications which have been heard, it seems highly desirable from a practical standpoint to defer such action until opportunity is given the carriers to justify the whole relief sought in respect of the rates on all traffic, especially since that course will not be prejudicial of the complainant. In the meantime, however, the carriers should promptly eliminate fourth section departures which they are not prepared to justify, such as are found in the class C scale applied to apples from Kansas to Woodward, Shattuck, and Goodwin, in the state of Oklahoma, on the line of the Atchison, Topeka & Santa Fe.

#### CONCLUSIONS.

As a whole the apple rates from both the northeastern and valley districts of Kansas to Oklahoma and Texas are not shown by the evidence of record to be either intrinsically unreasonable or unduly preferential of Arkansas and Colorado to the prejudice and disadvantage of Kansas. There are, however, some marked inequalities between the Kansas-Texas adjustment and the rates contemporaneously maintained from New Mexico to Texas for distances over 600 miles. The defendant carriers therefore should, and in accordance with their expressed intentions will be expected to, adjust these rates in such a manner as to leave no basis for complaint by either the Kansas or New Mexico growers. The complaint will be dismissed and the fourth section questions deferred for future consideration as suggested in the preceding paragraph.

52 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1118.  
LIVE STOCK LOADING AND UNLOADING CHARGES.

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No. 9977.

CHICAGO LIVE STOCK EXCHANGE

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted October 9, 1918. Decided February 11, 1919.*

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Upon the facts of record, *Held, That*—

1. The Union Stock Yard & Transit Company of Chicago is a common carrier engaged in interstate commerce and subject to the provisions of the act to regulate commerce.
2. The notice of cancellation of its tariff of charges for loading and unloading live stock, in carloads, at the Chicago stockyards has not been justified.
3. The loading and unloading of live stock, in carloads, at the Chicago stockyards is a duty of the shipper.
4. The loading and unloading of live stock, in carloads, at the Chicago stockyards may be assumed by the carriers in those instances in which their convenience is aided and their equipment conserved by so doing.
5. The loading and unloading service performed by the Union Stock Yard & Transit Company is for the benefit of the shipper, but tends also to the convenience of the line-haul carriers.
6. In the absence of a showing of undue prejudice how much, if any, of the loading and unloading charges at the Chicago stockyards may properly be absorbed by the line-haul carriers is dependent upon the degree to which their interests are served in any particular instance.
7. The failure to absorb all of the charges for loading and unloading live stock at the Chicago stockyards, while absorbing all such charges at certain other markets, has not been shown on this record to produce undue prejudice against shippers of live stock at the Chicago stockyards.
8. The Chicago stockyards are the terminals for receipt and delivery of live stock of the railroad utilizing them.

*Harry C. Barnes and Sims, Welch & Godman* for complainant.  
*S. H. Cowan* for National Live Stock Shippers Protective League and American National Live Stock Association; *Clifford Thorne* for National Live Stock Shippers League and Cornbelt Meat Shippers Association; *R. D. Rynder* for Swift & Company; and *Ralph M.*

*Shaw and George M. Kelly* for Union Stock Yard & Transit Company of Chicago.

*T. J. Norton, D. P. Connell, William W. Collin, jr., Kenneth F. Burgess, J. N. Davis, J. G. Love, W. E. Bush, W. N. King, W. F. Dickinson, F. A. Adams, Robert H. Widdicombe, and A. P. Humburg* for defendants.

#### REPORT OF THE COMMISSION.

By the consent of all parties, the above-named cases, which are related, have been consolidated and will be disposed of in one report.

By tariff, filed to become effective on May 21, 1917, the Union Stock Yard & Transit Company of Chicago, hereinafter called the stockyard company, increased its charge for unloading and loading cars of live stock at the stockyards of Chicago from 25 and 50 cents per car to 50 and 75 cents per car, respectively. The various railroads that deliver and accept shipments of live stock at the stockyards had for many years either borne or absorbed the entire charges of the stockyard company for this service, and when these charges were increased an attempt was made by the stockyard company to collect the increased charges from the line haul carriers. This increased charge the carriers refused to pay, with the result that the carriers increased their freight bills by the amount of the increased charges, and the stockyard company collected and retained such charges from the shippers. Effective September 1, 1917, the stockyard company filed with the Commission a cancellation notice, as follows:

Effective September 1, 1917, U. S. Y. & T. Co., tariff No. 3, I. C. C. No. 6, will be withdrawn and canceled. The loading and unloading platforms of the Union Stock Yard & Transit Company of Chicago will in future be used or available for use by the railways entering Chicago and using them as terminal stations, under operating arrangements.

Certain shippers of live stock at the Chicago stockyards protested against the proposed cancellation, and the cancellation notice was suspended by appropriate orders until June 30, 1918.

• The salient facts in the history of the stockyard company are as follows:

Prior to 1865 there were four different points in the city of Chicago at which live stock was delivered and marketed. In that year the railroads then entering Chicago organized a company to be known as the Union Stock Yard & Transit Company. The stock in this company was very largely taken by the Chicago railroads. The company was created by a special act of the legislature of the state of Illinois, approved February 13, 1865. The company was entitled to engage in many activities. Chief among the rights secured were:

(a) The right to construct the necessary buildings, railway tracks, and loading and unloading platforms for the accommodation of the business of a general union stockyard for cattle and other live stock.

(b) The right to construct, maintain, and operate a railway from the grounds that might be selected for its yards so as to connect with the tracks of all the railroads which terminated at Chicago.

Accordingly the stockyards were constructed and the railway was built. The stockyard company performed the loading and unloading of cars of live stock from the beginning of its operation. The loading charge of 50 cents and the unloading charge of 25 cents per car was established by the board of directors of the stockyard company on April 18, 1867. Up to January 1, 1919, these charges were either borne or absorbed by the respective railroads that performed the line haul. Carriers hauling live stock to Chicago moved the cars with their own power and crews over the tracks of the stockyard company to the unloading platform. No charge was apparently made against the line haul carriers for the use of the tracks for the transportation of these cars to the unloading platforms until 1894. Prior to that year the various railroads which had owned shares in the stockyard company disposed of their holdings. In 1894 a charge was made against the railways using these tracks which was assessed on a per car basis and varied to some extent with the length of the haul.

In 1897, the stockyard company leased all of its railroad property for a period of 50 years to an Illinois corporation, known as the Chicago & Indiana State Line Company, now known as the Chicago Junction Railway Company. The lease covered all its railways and tracks, the stock yard company retaining for itself the loading and unloading platforms and yards. Under this lease the stockyard company received two-thirds of the profits derived by the lessee from the operation of the railroad. There was also organized at a date not stated in the record a holding company, which appears to have been called an investment company, known as the Chicago Junction Railway & Union Stock Yards Company of New Jersey, which owned a majority of the stock of the stockyard company and the Chicago Junction Railway..

Subsequent to the assessment of the trackage charge for the use of the tracks leading from the trunk lines to the stockyards, the railroads continued to receive and deliver shipments of live stock, in carloads, at the stockyards and transport them with their own locomotives and crews over the tracks of the Chicago Junction Railway. They, however, soon published a tariff containing a switching charge of \$2 per car for the service of switching cars between the stockyards and points on their own lines. This increased the total rates from points of origin to the stockyards by \$2 per car. Complaint arose regarding the amount of the switching charge and was dealt with

by us in *Cattle Raisers Asso. v. F. W. & D. C. R. R. Co.*, 7 I. C. C., 513; *Cattle Raisers Asso. v. C., B. & Q. R. R. Co.*, 11 I. C. C., 277 and 12 I. C. C., 507. The switching charge was held by us to be unreasonable, but this conclusion was not sustained by the courts to which appeal was taken

In 1911, an action was brought in the Commerce Court to compel the stockyard company and the Chicago Junction Railway to file with the Interstate Commerce Commission tariffs in conformity with section 6 and reports and statements in conformity with section 20 of the act to regulate commerce. The Commerce Court there held, 192 Fed., 330, that the Chicago Junction Railway was a common carrier engaged in interstate commerce and subject to the provisions of sections 6 and 20 of the act to regulate commerce. The court also held that the owner of a railroad, which is leased and operated by a lessee as a common carrier engaged in interstate commerce, may be required to make annual reports to the Interstate Commerce Commission; that a stockyard company which receives live stock from carriers at its yards, pens, feeds and cares for the same, and maintains a public market for its sale, and which unloads and reloads it when required, receiving fixed prices for its services is not a common carrier within the meaning of the act to regulate commerce; that the term "common carrier" as used in the act is to be given its ordinary meaning of one engaged in the actual work of transportation; and a corporation not so engaged is not within the act merely because it is authorized by its charter to engage in such business. It is also stated that:

A stockyards company, authorized by its charter to build and operate a railroad and which did build and operate one in interstate commerce, on leasing its line and equipment for a term of years to an independent operating company, ceased to be a "common carrier" engaged in interstate commerce within the meaning of the interstate commerce act, \* \* \* and is not subject to the provisions of the act as such, because it receives as rental a share of the net earning of its road; nor because the owner of a majority of this stock also owns a majority of the stock of the lessee. \* \* \* A holding company is not a common carrier within the meaning of the interstate commerce act because of the fact that it owns all of the stock of a corporation which is such a common carrier.

An appeal was taken to the Supreme Court of the United States. In the opinion of the Supreme Court, 226 U. S., 286, the Commerce Court was upheld in its conclusion that the Chicago Junction Railway was a common carrier and subject to the provisions of sections 6 and 20 of the act to regulate commerce, but the conclusion of the Commerce Court relative to the stockyard company was reversed. In reference to these two companies the Supreme Court stated on page 306:

We think that these companies, because of the character of the service rendered by them, their joint operation, division of profits, and their common

52 I. C. C.

ownership by a holding company, are to be deemed a railroad within the terms of the act to regulate commerce, and the services which they perform are included in the definition of transportation as defined in that act. It is the manifest purpose of the act to include interstate railroad carriers, and by its terms the act excludes transportation wholly within a state. In view of its purpose and so construing the act as to give it force and effect, we think the stock yard company did not exempt itself from the operation of the law by leasing its railroad and equipment to the junction company, for it still receives two-thirds of the profits of that company and both companies are under a common stock ownership with its consequent control. We therefore think the Commerce Court was right in holding that the junction company should file its rates with the Interstate Commerce Commission and that it should also have held the stockyard company subject to the provisions of the interstate commerce acts.

On pages 304 and 305 of the decision, the court stated:

The fact that the performance of the service is distributed among different corporations having common ownership in a holding company which controls an interstate system was held in *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, *supra* [219 U. S., 498], to make no difference, where the service to be performed was a part of the carriage of freight by railroad in interstate commerce. Nor does it make any difference that neither the junction company nor the stockyard company issues through bills of lading. It is the character of the service rendered, not the manner in which the goods are billed, which determines the interstate character of the service. *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, *supra*; *Ohio R. R. Comm. v. Worthington*, 225 U. S. 101.

Together, these companies, as to freight which is being carried in interstate commerce, engage in transportation within the meaning of the act and perform services as a railroad when they take the freight delivered at the stockyards, load it upon cars, and transport it for a substantial distance upon its journey in interstate commerce, under a through rate and bill furnished by the trunk line carrier, or receive it while it is still in progress in interstate commerce upon a through rate which includes the terminal service rendered by the two companies, and complete its delivery to the consignee. They are common carriers because they are made such by the terms of their charter; hold themselves out as such and constantly act in that capacity, and because they are so treated by the great railroad systems which use them.

Subsequent to the decision of the Supreme Court the stockyard company filed a tariff with the Interstate Commerce Commission showing its charges for loading and unloading live stock. In 1918, it canceled its lease to the Chicago Junction Railway and entered into a lease by the terms of which it receives \$600,000 per year for the use of its tracks in lieu of a two-thirds share in the net profits of operation theretofore received.

The services it renders in connection with shipments of live stock to and from the stockyards are reported to be as follows:

(a) The service of guaranteeing the railroad companies against loss arising out of the delivery of live stock without the surrendering of the bill of lading.

(b) The service of guaranteeing freight charges.

52 I. C. C.



- (c) The service of loading and unloading the freight.
- (d) The service of notifying the consignees.
- (e) The service of correctly tabulating the car numbers and contents of the car.
- (f) The service of furnishing the weights to the carriers.
- (g) The service of maintaining records as to dead and crippled animals and of maintaining records showing deliveries to "billed consignees."
- (h) The service of furnishing the railroad companies terminal facilities for the receipt and delivery of live stock at Chicago.

The stockyard company contends that although it was held by the Supreme Court to be a common carrier as to some of its activities it is not altogether certain that the court referred to the particular activities above described in connection with shipments of live stock. It is also contended that the relationship between the stockyard company and the Chicago Junction Railway has changed to some extent since the decision of the Supreme Court. The language of the court's description of the activities of the stockyard company is as follows:

After leasing its railroad property to the junction company, the stockyard company continued to operate its stockyard facilities for loading and unloading cattle and other live stock bound for and coming from points outside the state, and to feed and water live stock in transit over the lines of trunk-line carriers, and also to feed, bed, and water live stock shipped to consignees doing business in the stockyards district.

The employees of trunk lines bringing live stock to the stockyards turn over the waybills accompanying such shipments, with what are called "live-stock stubs" attached, to the employees of the stockyard company, who use the waybills in unloading and counting the stock, and the waybills and stubs are then sent to the auditor of the stockyard company (being also the auditor of the junction company) who retains the stubs and forwards the waybills to the local agents of the trunk lines. The stockyard company advances the charges on such shipments to the trunk lines and collects from the consignees, usually commission men, doing business at the stockyards, the moneys it has so advanced for their accommodation.

It is clear, therefore, that in holding the stockyard company a common carrier the court certainly had in mind the particular activities of that company with reference to shipments of live stock. The only difference as to the relationship then and now existing between the two companies is that then the Chicago Junction Railway held a 50-year lease with approximately 35 years to run and paid two-thirds of its profits to the stockyard company as rental, whereas it now has a lease in perpetuity and pays \$600,000 per year as rental. The character of service rendered has not changed. The complementary relation of the stockyard company to the Chicago Junction Railway Company is now as it was in 1912. The stock of both companies is owned by a holding company with control of both organizations, and it is of no more real consequence to the actual owner of these companies which one makes a profit than

it is to a man in which pocket he carries his money. The relation of these two companies to each other and to the holding company controlling both and the respective services performed by each in connection with shipments of live stock can not now be held to be essentially different from the conditions existing in 1912. The inevitable conclusion is that the stockyard company is now, as to shipments of live stock to and from the stockyards, a common carrier engaged in interstate commerce and subject to the provisions of the interstate commerce act. Its tariff of charges relating to services performed in connection with shipments of live stock should be filed with this Commission. The notice of cancellation of its tariff of charges for loading and unloading live stock, in carloads, at the Chicago stockyards has not been justified.

The Chicago Live Stock Exchange, the complainant in Docket No. 9977, is made up of commission merchants and others engaged in the business of buying, selling, and shipping live stock at the Chicago stockyards. The stockyard company, the Chicago Junction Railway Company, and 27 other railways are made defendants.

The complaint asserts that it is unduly discriminative on the part of various carriers reaching other markets to absorb the entire loading and unloading charges at such markets and to refuse to absorb such charges in full at the Chicago stockyards; that it is as much the duty of the carrier to load and unload live stock as it is to haul it; that the method of compensating the stockyard company for its service in loading and unloading cars of live stock is a matter to be adjusted between that company and the trunk line carriers and that it should be made the basis of an operating agreement between the stockyard company and interested carriers and not the subject matter of published tariff arrangements which involve the shipping public. The complainant urges that if the stockyard company is not permitted to cancel its tariff, the line haul carriers should be required to publish appropriate amendments to their tariffs showing absorptions of the increased loading and unloading charges; that if the stockyard company is permitted to cancel its tariff, then the line haul carriers should be ordered to amend all their tariffs containing rates on live stock to and from the Chicago stock yards in such manner as to authorize the loading and unloading of cars at these yards without expense to the shipper. Reparation is sought against the defendants on all shipments of live stock, in carloads, made by complainants to or from the Chicago stock yards since May 21, 1917, amounting to 25 cents per car, or such other sum as, in view of the evidence to be adduced, we might consider due.

An intervening petition was filed on behalf of Swift & Company and certain other corporations, and the National Live Stock Shippers'

Protective League. The interveners asked for reparation of 25 cents per car on shipments loaded and unloaded for them at Chicago since the taking effect, on May 21, 1917, of the tariff filed by the stockyard company increasing by 25 cents per car the loading and unloading charges at the yards.

As stated, the complaint makes the broad assertion that it is the duty of the carriers transporting shipments of live stock, in carloads, to load and unload such shipments. In *National Lumber Dealers' Assn. v. A. C. L. R. R. Co.*, 14 I. C. C., 154, we had occasion to deal with the general practice obtaining throughout the country as to loading and unloading shipments of freight in carloads. At page 160 of this report we stated:

Ever since the inception of railroad transportation shippers have, generally speaking, loaded and their consignees have unloaded carload freight. This practice or custom arose naturally because it was the easiest, most economical, and satisfactory way of doing business. It is practically out of the question for railroads to provide men to load and unload carload freight at all points in the country. The shipper can load more satisfactorily and economically than anyone else. He is able to possess himself of effective appliances, where they can be used, to employ skilled men to properly load all carload traffic, whether shipped in closed or on open cars. For the same reasons consignees are the best fitted to unload shipments. For more than fifty years the loading by consignor and unloading by consignee has been a recognized rule of carload transportation, and this rule extends to and includes commodities which yield to carriers the larger part of their income.

While, as stated, the rule that shippers must load and unload carload freight is generally applied, there are exceptional instances in which this work is done by the carriers. An example is shown in *Davies v. L. & N. R. R. Co.*, 18 I. C. C., 540. In that case the complainant contended that it was the duty of the carriers to load carload shipments of fruit and vegetables at their own expense. We there found, as stated in the syllabus:

Complainant's contention that it is the duty of defendants to load, strip, and brace carload shipments of fruit and vegetables at their own expense, for the reason that this service is included in the carload rate is not tenable, because the tariffs of the principal defendant provide that shippers shall load and unload carload shipments. The service of loading, furnishing material, and placing in the cars is an additional service over and above the transportation for which the carriers are entitled to receive reasonable compensation.

The soundness of the view that ordinarily it is the duty of the shipper to load and unload carload freight can not be questioned. What is there, then, respecting shipments of live stock in carloads that differentiates such shipments from that of other articles so clearly as to shift the responsibility and duty of loading and unloading from the shipper to the carrier? Section 1 of the act to regulate commerce provides:

That the term "transportation" shall include all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

There is here, however, no attempt to particularize as between one variety of freight and another and to provide for a greater degree of responsibility or an added duty with respect to carload shipments of live stock than exists as to other freight. Section 1 further provides:

It is hereby made the duty of all common carriers subject to the provisions of this act to establish, observe, and enforce \* \* \* just and reasonable regulations and practices affecting \* \* \* all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this act upon just and reasonable terms.

In this portion of the section there is nothing stated which in any manner sets apart shipments of live stock from shipments of other freight unless it be that it is impracticable to secure their handling and delivery safely and promptly unless the carriers do the loading and unloading. The complainant relies largely upon an expression used by the Supreme Court in *Covington Stock Yards Co. v. Keith*, 139 U. S., 128, and in *United States v. Union Stock Yards*, 226 U. S., 286. It was there stated:

The transportation of live stock begins with their delivery to the carrier to be loaded upon its cars and ends only after the stock has been unloaded and delivered, or offered to be delivered, to the consignee, if to be found at such place as admits of their being safely taken into possession.

In *Doyle v. Continental*, 94 U. S., 535, the same court stated:

The opinion of a court must always be read in connection with the facts upon which it is based.

In the *Covington Case* there was no issue as to the carrier's duty to load and unload cars of live stock. The carriers long before had assumed the duty of loading and unloading live stock at the Covington stock yards. The carriers there involved held themselves out to perform the loading and unloading service and the record does not show whether this was brought about by competitive conditions or whether the service was compensated for in the line-haul rate. The court further stated in the same opinion:

A railroad company, it is true, is not a carrier of live stock with all the responsibilities that attend it as a carrier of goods. *North Penn v. Commercial Bank*, 123 U. S., 727, 734. There are recognized limitations upon the duty and responsibility of carriers of inanimate property that do not apply to carriers of live stock. These limitations arise from the nature of the particular property transported. But, notwithstanding this difference in duties and responsibilities, a railroad company, when it undertakes generally to carry such

52 L. C. O.

freight, becomes subject, under similar conditions, to the same obligations, so far as the delivery of the animals which are safely transported are concerned, as in the case of goods.

In other words, the railroad company becomes subject to the same obligations in respect to the delivery of live stock as in the case of goods. If it holds itself out to deliver for one person, it must deliver for all persons. It was testified in this case that in the calendar year 1917, 87.6 per cent of the stock originating on the Santa Fe system originated at points where the shippers did the loading. The Chicago & North Western Railway handled 68,000 cars of live stock to Chicago in 1917 and over 90 per cent originated at points where the shippers did the loading. The practice on these roads is said to be representative of the practices on other western roads.

#### PRIMARY MARKETS.

The principal live stock markets are Chicago, Peoria, and East St. Louis, Ill.; Omaha and Nebraska City, Nebr.; Sioux City, Iowa; Kansas City, St. Joseph, and St. Louis, Mo.; Atchison and Wichita, Kans.; Oklahoma City, Okla.; Amarillo, Fort Worth, and El Paso, Tex.; Pueblo and Denver, Colo.; St. Paul, Minn.; Milwaukee, Wis.; Detroit, Mich.; Louisville, Ky.; Cincinnati, Ohio; Indianapolis, Ind.; Pittsburgh and Philadelphia, Pa.; Jersey City, N. J.; and East Buffalo and New York, N. Y. At these points it is the practice for the carriers to absorb, at least in part, loading and unloading charges. The receipts of live stock at the Chicago stockyards for the year 1917 were 255,093 cars. The receipts during the month of January of that year were 29,329 cars. The amount of stock received daily is so large and the necessity for its prompt unloading is so imperative that it is probably impracticable for the actual consignees themselves to do the unloading. A force of men is maintained at the stockyards for that purpose, and it is testified that ordinarily a trainload of live stock will be unloaded at the rate of approximately one minute per car. There is inevitably considerable difference between the situation existing at country points, where the loading and unloading is performed by the shippers, and the situation at a great market like that afforded by the Chicago stockyards, where the receipts will often be as much as a thousand cars per day. Ordinarily train crews are not composed of stockmen, and it can not well be argued that there is any more obligation upon a railroad company to furnish train crews particularly skilled in the handling of live stock than there is to furnish crews particularly skilled in the handling of lumber, grain, or any other commodity. While it is true that the train crews at country stations do sometimes assist with the loading and unloading, their principal duties are in connection with the proper and convenient

52 I. C. C.

placing of cars. The volume of receipts or shipments at country points is often so small that the maintenance by the railroad of an organization at such places for the purpose of loading and unloading cars is out of the question. At the Chicago stockyards the receipts and shipments are so large as to make necessary the maintenance of an organization to perform this service. This organization serves both the shippers and the carriers. The consignee finds his stock promptly unloaded and cared for, whether he is on hand at the moment of its arrival or not. The carriers secure the prompt release of their equipment and its return to the service.

ARE THE CHICAGO STOCKYARDS THE LIVE-STOCK TERMINALS OF THE LINE-HAUL CARRIERS?

Some testimony was offered as to the facilities of some of the carriers for receipt and delivery of live stock at points on their own rails within the city of Chicago. This has nothing to do with the question here in issue. There is no charge in the complaint that these facilities are not adequate for the receipt and delivery of all live stock which the shippers may desire to load at or consign to such points. A very large proportion, said to be as high as 98 per cent of the stock shipped to Chicago, is consigned to persons at the stockyards. None of the line-haul carriers reaches the Chicago stockyards with its own rails, but all utilize the tracks of the Chicago Junction Railway, for which they pay a trackage charge as published in the tariff of the latter company.

In *Interstate Commerce Commission v. C., B & Q. R. R. Co.*, 186 U. S., 320, the Supreme Court, in speaking of the right to divide the total rate to the stockyards into two parts consisting of a line haul charge and a switching charge, said:

We see no reason to doubt, under the facts of this case, the correctness of the rule as to the right to divide the rate, admitted by the Commission and announced by the court below. \* \* \* Whether the rule which we approve as applied to the facts in this case will be applicable to terminal services by a carrier on his own line, which he was obliged to perform as a necessary incident of his contract to carry, and the performance of which was demanded of him by the shipper, is a question which does not arise on this record and as to which we are, therefore, called upon to express no opinion.

By this, it appears that the court did not consider the terminal service at the stockyards as a necessary incident to the contract to carry assumed by the line haul carriers; that in delivering at the stockyards they undertook a further and additional service—a delivery to a terminal not on their lines—and were entitled to additional compensation for so doing. These stockyards, however, are in fact

a terminal for the receipt and delivery of live stock; that is one of the purposes for which they were created and one of the uses to which they are now put. The situation appears to be exactly the same as it would be were the stockyards outside the city limits of Chicago. The stockyards must be the terminal for the receipt and delivery of live stock of the railroad utilizing them.

The complainant disclaims any attempt to prove that the increased loading and unloading charges are unreasonable in and of themselves. The claim is that, whether these charges are more or less than they reasonably should be, it is a service performed for the line-haul carriers, and must be paid for by them. The complainant does assert that the absorption of the entire loading and unloading charges by the line-haul carriers at other live-stock markets and the failure to absorb the entire charges at Chicago is unduly preferential of other markets and unduly prejudicial to the Chicago market.

A statement was filed in the record showing the charges accruing on four cars of cattle shipped to the Chicago stockyards from Plattsmouth, Mo. These charges were as follows:

Freight, including war tax and unabsorbed unloading charges.....	\$246. 28
Fire insurance.....	. 40
Yardage.....	26. 00
Feed.....	10. 50
Live Stock Protective League.....	. 20
Commission.....	60. 00
<hr/> Total.....	<hr/> 843. 88
Sale price of stock.....	10, 482. 92
<hr/> Net proceeds.....	<hr/> 10, 089. 54

The unabsorbed unloading charges on these four cars amounted to \$1. The unloading charges that were absorbed were also \$1. The line-haul carriers have always held themselves out to absorb 25 cents per car for unloading and 50 cents per car for loading at these yards. These carriers have not held themselves out in terms to absorb the entire charge for loading and unloading at Chicago. The additional charge of 25 cents per car which the shippers have been called upon to pay since May 21, 1917, is altogether too insignificant in quantity to affect the movement of stock to or from that market as compared with other markets. It seems altogether unlikely that its nonabsorption or absorption by the carriers has had or will have the effect of turning away or bringing to that market a single carload of stock.

The carriers ask the Commission to find that the absorption of any part of the loading and unloading charges at Chicago or other mar-

kets is unduly preferential of those markets and unduly prejudicial to the various points at which such charges are not absorbed. The organization at the stockyards that handles this stock fulfils a very necessary and useful purpose, serving the interests of both carriers and shippers, and can very well exact a fair and reasonable price for the service performed. The situation at this point, as well as at other markets, must rest upon its own bottom. In so far as the convenience of the railroads is aided and their equipment conserved by an organization at this market that loads and unloads the livestock, we can see nothing unlawful in the absorption of such part of these charges as will fairly represent the measure of the service rendered to the railroads.

The determination at each point where such an organization exists of the amount of the loading or unloading charges that the line-haul carriers may properly absorb in consideration of the service rendered to them rests, in the first instance, with the carriers serving such point. The record is not sufficient to enable us to reach a judgment as to what portion of the loading and unloading charges at the Chicago stockyards should be absorbed by the line-haul carriers.

The theory upon which the complainant, the stockyard company and the interveners have proceeded, is that the line-haul carriers created the situation existing at Chicago by the organization of the Union Stock Yards & Transit Company, and the absorption through many years of its loading and unloading charges; that the stockyard company is an agent of the line-haul carriers; that the facilities of that company are absolutely essential to a complete delivery at this great market; that these facilities are private property, not subject to public control, although used in performing a common carrier service; that whatever price the company may see fit to exact for the service rendered and the facilities used it must be paid by the line-haul carriers. They disregard the facts that the stockyard company is made a common carrier by the terms of its charter; that it has been held to be such by the Supreme Court of the United States; that its facilities for loading and unloading live stock are not on the rails of the line-haul carriers; and that these facilities are reached by the rails of the Chicago Junction Railway.

**McCHORD, Commissioner:**

Except as to certain unimportant changes the foregoing is the report prepared by the examiner and served upon the parties. Exceptions were filed thereto by certain of the parties. Those filed by the Chicago, Milwaukee & St. Paul Railway Company and the Atchison, Topeka & Santa Fe Railway Company have been considered, and we find them not well taken. The exceptions filed by the stock-



yard company, the complainant, and the National Live Stock Shippers' Protective League will now be considered.

Certain questions of fact are raised in the exceptions, but upon examination of the record we find that the facts as stated are correct.

An exception is taken to the conclusion reached by the examiner that as to shipments of live stock the stockyard company is a common carrier and should file tariffs. It is contended that this question is not in issue. With this we can not agree. In order to dispose of the matters involved in this proceeding it is first necessary to determine the status of the stockyard company. If held to be a common carrier the provisions of the act so far as they are applicable must be complied with.

From the facts of record it is clear that the stockyard company is a common carrier within the meaning of section 1 of the act. It is performing services in connection with the receipt and delivery of interstate shipments. As above stated, the stockyard company was held to be a common carrier by the Supreme Court, and there has been practically no change in its status since that decision was rendered.

It is contended that the loading and unloading services are performed by the stockyard company as the carriers' agent, and that its charges therefor need not be filed under section 6 of the act whether or not it is a common carrier in respect to such service.

Section 6 of the act provides that common carriers shall file with the Commission schedules showing all charges for transportation, and that such schedules shall state separately all terminal charges and other charges which the Commission may require. Section 6 also provides that no carrier, unless otherwise provided, shall engage or participate in the transportation of property unless the charges upon which the same is transported have been filed and published in accordance with the provisions of the act.

Rule 10(c) of Tariff Circular 18-A provides that a terminal road must publish tariffs containing all its charges whether any part or all of such charges are absorbed by connecting carriers; and rule 10(e) provides that if part or all of the charges of a terminal carrier are to be absorbed by a connecting road, the tariff of such connecting road must specify that its rate includes originating or delivery services by the terminal road, and that it will absorb the charges of such terminal road in a specified sum, or as per the current tariffs on file with the Commission.

An exception is also taken to the examiner's conclusion that the stockyards are the terminals of the Chicago Junction Railway Company. In *Boardman Co. v. S. P. Co.*, 37 I. C. C., 81, the Commis-

52 I. C. C.

sion stated that in the absence of tariff provisions to the contrary the line-haul rate of a particular carrier includes the receipt or delivery of carload freight only at industries or other points located upon its own rails. In this case there are no tariff provisions requiring the line-haul carriers to make deliveries off their rails.

It is contended that when a carrier acquires, either by lease or under trackage arrangements, the right to use the rails of another carrier in its through business, the rails of the lessor, as between the shipper and the lessee, become the rails of the lessee and part of its system. The Chicago Junction Railway is a party to the tariffs of the line-haul carriers containing the rates to and from the stockyards, or the additional charges for the movement from the rails of the line-haul carriers to the stockyards are published in a tariff to which the Chicago Junction Railway is a participating carrier, so that the rates applied are either joint or combination rates to which the Chicago Junction Railway is a party.

An exception is also made to the conclusion that the loading and unloading of live stock is a duty of the shipper. It is contended that the service is for the carriers' benefit and not that of the shippers. It is clear that the line-haul carriers are under no obligation to load or unload live stock for shippers, and if they do so they are entitled to compensation therefor. In the absence of tariff provisions to the contrary this is a separate and distinct service not included in the transportation rate. We have held that for loading and unloading, and for all other special services apart from conveyance, the carriers may properly make a reasonable charge since they are not accessorial parts of the transportation which section 1 requires the carriers to furnish. *Dunnage Allowances*, 30 I. C. C., 538, 543.

Upon the facts of record we find that—

1. The Union Stock Yard & Transit Company of Chicago is a common carrier engaged in interstate commerce and subject to the provisions of the act to regulate commerce.

2. The notice of cancellation of its tariff of charges for loading and unloading live stock, in carloads, at the Chicago stockyards has not been justified.

3. The loading and unloading of live stock, in carloads, at the Chicago stockyards is a duty of the shipper.

4. The loading and unloading of live stock, in carloads, at the Chicago stockyards may be assumed by the carriers in those instances in which their convenience is aided and their equipment conserved by so doing.

5. The loading and unloading service performed by the Union Stock Yard & Transit Company is for the benefit of the shipper but tends also to the convenience of the line-haul carriers.

52 I. C. C.

6. In the absence of a showing of undue prejudice, how much, if any, of the loading and unloading charges at the Chicago stockyards may properly be absorbed by the line-haul carriers is dependent upon the degree to which their interests are served in any particular instance.

7. The failure to absorb all of the charges for loading and unloading live stock at the Chicago stockyards, while absorbing all such charges at certain other markets, has not been shown on this record to produce undue prejudice against shippers of live stock at the Chicago stockyards.

8. The Chicago stockyards are the terminals for the receipt and delivery of live stock of the railroad utilizing them.

On December 28, 1917, the federal government assumed control generally of the transportation systems of the country, including those of the defendants in No. 9977. The stockyard company has not been taken over by the federal government. The Director General of Railroads has not been made a party defendant. No change due to the operation of the defendants' lines as a unit has been brought to our attention.

Our order suspended the cancellation notice until June 30, 1918, and the effective date thereof was voluntarily postponed by the stockyard company until January 1, 1919. No further postponement was made, so that there are no charges now on file covering the loading and unloading services. Section 6 of the act provides that no carrier, unless otherwise provided, shall engage or participate in the transportation of property unless the rates and charges upon which the same is transported have been filed and published in accordance with the provisions of the act. Therefore, if the circumstances and conditions surrounding the transportation since that date are similar to those in effect at the time the evidence was submitted, it would seem that the above requirement of the act has not been met. If such is the fact, prompt action should be taken by the stockyard company to remedy this situation.

An order will be entered dismissing the complaint, and the proceeding of investigation will be discontinued.

52 I. C. C.

## . WESTERN CEMENT RATES.

No. 8182.<sup>1</sup>IN THE MATTER OF RATES ON CEMENT BETWEEN  
POINTS IN WESTERN TRUNK LINE TERRITORY AND  
BETWEEN POINTS IN WESTERN TRUNK LINE TER-  
RITORY AND ADJACENT TERRITORIES.

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*Submitted November 9, 1918. Decided February 17, 1919.*

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Findings of original report revised so as to provide that scale territories I and II, as defined in our original report herein, be consolidated, and that the rates prescribed as maxima for interstate application for scale territory II, subject to the increase provided for by General Order No. 28 of the Director General, be made applicable to the consolidated territory; that in fixing scale rates between specific points distance via the shortest routes embracing as a maximum the lines or parts of lines of no more than three carriers be used; that Oglesby, Deer Park, La Salle, and Utica, Ill., be grouped and given the same rates; that in the construction of rates from Kansas gas belt mills short-line distances from Chanute, Kans., be used except that where the short route is through Kansas City average distances from all mills within the group shall be used; that scale II rates, plus increase provided by General Order No. 28, be substituted for scale I rates prescribed as maxima for interstate application in our original report from certain producing points in Michigan and Indiana to points in Illinois.

*J. N. Davis, A. F. Cleveland, L. C. Mahoney, and R. Merrick for western carriers; D. P. Connell for eastern carriers.*

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<sup>1</sup>The report also embraces: Investigation and Suspension Docket No. 257, Iowa-Minnesota Cement Rates; Investigation and Suspension Docket No. 339, Cement Rates from Mason City, Iowa; Investigation and Suspension Docket No. 382, Cement Rates from Mason City, Iowa, to Beach, N. Dak.; Investigation and Suspension Docket No. 406, Freight Rates between Points in Minnesota via Interstate Routes and between Points in Minnesota and other States; Investigation and Suspension Docket No. 408, Cement Rates between Points in Illinois and Points in Minnesota and other States; Investigation and Suspension Docket No. 463, Cement Rates from Duluth, Minn., Mason City and Des Moines, Iowa, to Stations on the Midland Continental Railroad; Investigation and Suspension Docket No. 728, Cement from Mason City, Iowa, and other Points; Investigation and Suspension Docket No. 819, Cement to International Falls, Minn., No. 2; Investigation and Suspension Docket No. 935, Cement to Nebraska Stations, Investigation and Suspension Docket No. 950, Cement from Ada, Okla.; Investigation and Suspension Docket No. 960, Cement to Sallisaw; Investigation and Suspension Docket No. 981, Cement to Iowa Points; No. 5914, Newaygo Portland Cement Company v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 7138, Atlas Portland Cement Company v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 8019, Iola Cement Mills Traffic Association et al. v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 8294, Marquette Cement Manufacturing Company et al. v. Chicago, Rock Island & Pacific Railway Company et al.; No. 8321, Huron Portland Cement Company v. Detroit & Mackinac Railway Company et al.; No. 8321 (Sub-No. 1), Newaygo Portland Cement Company v. Pere Marquette Railroad Company et al.; No. 8453, Chicago Portland Cement Company et al. v. Illinois Central Railroad Company et al.; No. 8490, Oklahoma Portland Cement Company v. Missouri, Kansas & Texas Railway Company et al.; No. 8824, Chicago Portland Cement Company et al. v. Chicago & North Western Railway Company et al.; No. 8932, Newaygo Portland Cement Company v. Duluth, Missabe & Northern Railway Company et al.; and Fourth Section Applications Nos. 54, 98, 226, 553, 839, 2380, 2672, 3054, 3065, 3110, 3114, 3529, 3540, 3758, 3839, 3893, 4218, 4219, 4220, 4779, 4787, and 4823.

*F. C. Taylor* and *T. L. Philips* for Missouri Portland Cement Company; *W. S. Morrison* for Colorado Portland Cement Company, United States Portland Cement Company, and Oklahoma Portland Cement Company; *Hal H. Smith* for Michigan Cement Association; *Frank Willeke* for Continental Portland Cement Company; *E. S. Gubernator* and *F. E. Paulson* for Lehigh Portland Cement Company; *John S. Burchmore* for La Salle Portland Cement Company, Marquette Cement Manufacturing Company, and Sandusky Cement Company; *H. N. McEwen* for Newaygo Portland Cement Company; *W. S. Whitten* for Lincoln Commercial Club; *E. H. Hogueland* for Dewey Portland Cement Company; *L. T. Sunderland*, *E. H. Hogueland*, and *B. L. Glover* for Iola Cement Mills Traffic Association; *F. T. Bentley* for Universal Portland Cement Company; *Frank Lyon* and *Walter Young* for Atlas Portland Cement Company; and *C. B. Condon* for Hawkeye Portland Cement Company.

#### SUPPLEMENTAL REPORT OF THE COMMISSION.

**DANIELS, Chairman:**

In our previous report, 48 I. C. C., 201, we prescribed maximum rates for the interstate transportation of cement within western trunk line territory and between points in western trunk line territory and certain territories adjacent thereto. The general territory involved was divided into zones or scale territories numbered, respectively, I, II, III, and IV, the limits of which are defined in our report. For scale territory I, which embraces substantially all of the state of Illinois and a narrow strip of southern Wisconsin, we prescribed a basic scale of distance rates. For scale territory II, which, roughly defined, is that territory lying north and west of scale territory I and east of the Missouri River, we prescribed a scale of maximum distance rates 120 per cent of the basic scale. The rates in scale territories III and IV are respectively on higher bases than rates in scale territories I and II, but do not constitute fixed percentages of the basic scale. In addition to prescribing these scales of distance rates, 11 points of destination were selected and denominated key points. These key points include the most important markets and a few others. To these key points specific or so-called key-point rates were prescribed as maxima for interstate application from all the principal points of production. Some of these key-point rates were based exactly on the scales; others were slightly under or over the scale rates.

Following the publication of the tariffs containing the rates which the carriers had constructed in accordance with their interpretation of our order, numerous complaints were received from shippers. These complaints were based chiefly upon alleged failures of the carriers to observe our order. Some complaints were also received with regard to the effect of our order. Probably the most prolific

52 I. C. C.

cause of complaint was the manner in which the carriers had ascertained distance for the fixation of the scale rates between specific points. By our order we had required the carriers to use as a measure of the scale rates the distance via short-line workable routes. The use in our order of the term "short-line workable route" was not novel to the case, and it was not anticipated that any great amount of difficulty would be experienced in checking in rates in accordance with this method of measuring distances. The carriers seem to have construed short-line workable distance to mean distance via existing routes ordinarily and customarily used for the movement of shipments. Certain of the shippers, on the other hand, contend that the term means distance via the shortest possible routes. That the construction placed on our order by the shippers is not justified is evidenced by the illustration of a short-line workable route given on page 240 of our original report where, in fixing the short-line workable route from Newaygo, Mich., to Milwaukee, we used the single line, although a route shorter by 20 miles could have been constructed by including two lines.

What the Commission had in mind was the shortest distance via reasonable and practicable routes. Such routes might or might not be the routes via which the carriers ordinarily move the traffic. They might or might not be the shortest possible routes. It was expected that fair judgment would be exercised in ascertaining each short-line workable route, and that when such route had been ascertained the distance via that route would be made the measure of the rate. That the carriers have not complied with our order as to some rates seems certain. For instance, from the Kansas gas belt to stations north of Superior, Nebr., the carriers have apparently considered the route via Kansas City as the short workable route and have checked in the rates accordingly, whereas there is a much shorter route available through Superior. The possible latitude of interpretation inherent in the term "short-line workable route" and the divergence of opinion between shippers and carriers as to its meaning and application, have led us to the conviction that a more definite rule of measuring distance for the fixation of the rates is desirable.

The rates prescribed for scale territory I were, at the time of construction, on a substantial level with cement rates in central freight association territory. Subsequently the cement rates in central freight association territory were increased 1 cent per 100 pounds in accordance with our decision in *The Fifteen Per Cent Case*, 45 I. C. C., 303. A similar increase was not made in the scale I rates prescribed in our previous report herein. Both the central freight association territory rates and the rates prescribed in our order herein have been increased 2 cents per 100 pounds in compliance with General Order No. 28 of the Director General of Railroads. This order will be hereinafter referred to as Order 28. Rates in central freight

association territory are now substantially on the same level with the rates we prescribed for scale territory II particularly for the shorter distances. It follows that the rates in scale territory I are on a disproportionately lower level than the rates in the territories lying on the east and on the west.

The conditions above described led us, on October 7, 1918, to issue an order citing the parties to show cause, on November 9, (1) why scale territories I and II should not be consolidated upon the basis of scale II, (2) why in the application of the scales the shortest possible route between points of origin and points of destination should not measure the distance which shall determine the rate, such route to be (a) the shortest possible route via switch connections now existing, or (b) the shortest possible route via switch connections which may now or hereafter exist, and (3) why an arbitrary should not be added for a joint line haul, subject to the shippers' right to the lowest rate within the territory traversed by the shortest possible route.

At the argument upon the rule to show cause the parties were given an opportunity to discuss not only the propositions set forth in the rule but also several other collateral matters, which will be hereinafter commented upon.

Little objection developed on argument to the suggested consolidation of scale territories I and II. In fact there was general agreement that this consolidation should be made. We are of opinion that these territories should be consolidated and that the scale rates effective in scale territory II should be applied as hereinafter indicated in the consolidated territory, and we so find.

There was also quite general agreement among the cement interests that the shortest possible routes via existing or future switch connections should measure distance for the fixation of the scale rates. The carriers opposed this plan chiefly on the ground of the labor that would be entailed in ascertaining the shortest possible routes. An instance was cited where, in attempting to ascertain the shortest possible route between two points, 19 possible routes were found. It was also stated that in ascertaining the shortest possible route from Hannibal, Mo., to five points of consumption in Iowa, Wisconsin, and Illinois, the services of an employee skilled in such work were utilized for more than 10 hours. Counsel for the carriers contended that to require the carriers to work out the short routes to all points within this vast territory, from the numerous points of production, would place upon the carriers an unwarranted burden, especially at this time of diminished clerical forces. That the task of ascertaining the short route distance is one of magnitude must be conceded, but we are not impressed with its impracticability provided a reasonable limit is set upon the number of lines to be embraced in such short routes. Neither do we believe that the task will be found as burden-

some as anticipated by the carriers. Work of this character can be done in cumulative fashion, determining concurrently the short-route distances to a number of points. We are of opinion that distance via the shortest possible routes embracing as a maximum the lines or parts of lines of no more than three carriers via existing connections for interchange of carload traffic should be used as the measure of the scale rates in lieu of the short-line workable route distance prescribed by our previous report and order, and that it will not be necessary to revise the rates every time a new connection is installed. The use of the short-route distance is merely for the purpose of fixing a measure of the rates and does not necessarily govern the routes traversed as an operating matter. If in checking in the shortest route the lines of the same carrier are used twice in constituting different sections of the route, the two sections of the same carrier's line shall count as two of the three factors contemplated by the rule.

We adhere to the grouping of the gas belt mills, including Dewey, Okla., and the averaging of the distances therefrom where the short routes are through Kansas City. Where the short routes are not through Kansas City, the short-line distance measured from Chanute should be used for all mills in the group. Our opinion herein will modify the finding made in our original report as to the distance governing rates between Newaygo, Mich., and Milwaukee. As stated in our previous report through routes and joint rates should be established via all reasonably available direct lines.

The relationship prescribed for Gilmore City, Iowa, should be continued, as also the grouping of Sugar Creek and Bonner Springs both to take Kansas City distances; of Continental and Prospect Hill both to take St. Louis distances; and of Steelton with Duluth, taking Duluth distances. Buffington should take Chicago distances as indicated in the original report.

The increase in the level of rates in scale territory I as the result of the consolidation of this territory with scale territory II will necessitate a revision of rates to certain of the key points where the movement from the point of production to the key point is within or through what is now scale territory I. The following table shows (1) the distance as set forth in our previous report between the points of production and the key points; (2) the key-point rates fixed by our order; (3) the rates which would result from the application of the present scales between the points of production and the key points; (4) the rates which would result from the application of scale II rates between the points of production and the key points; (5) the present key-point rates as increased by Order 28; and (6) the key-point rates which we believe should be established as a result of the consolidation of scale territories I and II:



From—	To Chi- cago.	To Mil- wau- kee.	To St. Paul.	To St. Louis.	To Kan- sas City.	To Omaha.	To Stoux City.	To Stoux Falls.	To Medi- son.	To Wan- san.	To Ed- mon- da.
<b>Buffington:</b>											
Mileage.....	22	85	396	282	439	476	510	526	130	265	25
Key-point rate fixed by Commission's order.....		6	10.7	8.8	12	12.4	13	13.2	7	9.4	2.1
Rate produced by present scales.....		5.3	11.3	8.8	11.8	12.4	13	13.2	6.9	9.4	2.1
Rate produced by scale II.....		6.4	12.3	10.5	12.9	13.5	14.1	14.4	7.5	10.2	1.1
Present rate.....		8	12.5	11	14	14.5	15	15	9	11.5	12.1
Proposed rate.....		9	13.5	12.5	15	15.5	16	16.5	9.5	12	13.1
<b>La Salle:</b>											
Mileage.....	96	169	377	228	360	404	439	475	136	290	26
Key-point rate fixed by Commission's order.....		5.6	6.5	10.4	8	10.7	11.4	11.8	12.4	7	9.7
Rate produced by present scales.....		5.6	7	11	8	10.7	11.4	11.8	12.4	7.1	9.7
Rate produced by scale II.....		6.8	8.4	12	9.5	11.7	12.4	12.9	13.5	7.7	10.5
Present rate.....		7.5	8.5	12.5	10	12.5	13.5	14	14.5	9	11.5
Proposed rate.....		9	10	13.5	11.5	13.5	14.5	15	15.5	9.5	12.5
<b>Mason City:</b>											
Mileage.....	320	299	140	419	339	209	194	190	215	280	406
Key-point rate fixed by Commission's order.....		10	9.8	7	12.6	11.4	9	9	9	9.4	10
Rate produced by present scales.....		10.3	9.8	7.7	12.6	11.4	9.2	9	9	9.4	10.4
Rate produced by scale II.....		11.2	10.7	7.7	12.6	11.4	9.2	9	9	9.4	10.4
Present rate.....		12	12	9	14.5	13.5	11	11	11	11.5	12
Proposed rate.....		13	12.5								
<b>Hannibal:</b>											
Mileage.....	282	360	422	117	199	318	409	452	310	456	503
Key-point rate fixed by Commission's order.....		8.8	9.7	11.1	6.1	9	11	12.4	13.2	10	12.1
Rate produced by present scales.....		8.8	9.7	11.7	6.1	9	11	12.4	13.2	10	12.1
Rate produced by scale II.....		10.5	11.7	12.7	7.3	9	11	12.4	13.2	10.9	13.2
Present rate.....		11	11.5	13	8	11	13	14.5	15	12	14
Proposed rate.....		12.5	13.5	14	9.5					13	15
<b>St. Louis:</b>											
Mileage.....	282	354	540		277	413	508	569	349	497	500
Key-point rate fixed by Commission's order.....		8.8	9.7	12.5		10.4	12.6	14.1	15	10.6	12.7
Rate produced by present scales.....		8.8	9.7	13.2		10.4	12.6	14.1	15	10.6	12.7
Rate produced by scale II.....		10.5	11.7	14.4		10.4	12.6	14.1	15	11.5	13.8
Present rate.....		11	11.5	14.5		12.5	14.5	16	17	12.5	14.5
Proposed rate.....		12.5	13.5	15.5						13.5	16
<b>Duluth:</b>											
Mileage.....	465	376	151	691	627	497	422	343	325	225	300
Key-point rate fixed by Commission's order.....		12.2	12	7.3	15.4	15.9	13.8	12.7	11.5	11.2	9.5
Rate produced by present scales.....		12.2	12	8.2	15.5	15.9	13.8	12.7	11.5	11.2	9.5
Rate produced by scale II.....		13.3	12	8.2	16.8	15.9	13.8	12.7	11.5	11.2	9.5
Present rate.....		14	14	9.5	17.5	14	16	14.5	13.5	13	11.5
Proposed rate.....		15.5			18.5						
<b>Des Moines:</b>											
Mileage.....	344	373	258	334	218	145	194	235	300	300	300
Key-point rate fixed by Commission's order.....		10.5	11	8.9	11.4	9.4	8	9	9.7	10.7	11.3
Rate produced by present scales.....		10.6	11	10.1	11.4	9.4	8	9	9.7	10.7	11.3
Rate produced by scale II.....		11.5	12	10.1	11.4	9.4	8	9	9.7	10.7	12.3
Present rate.....		12.5	13	11	13.5	11.5	10	11	11.5	12.5	13.5
Proposed rate.....		13.5	14								14.5
<b>Kansas City:</b>											
Mileage.....	439	513	482	277		200	286	377	459	617	720
Key-point rate fixed by Commission's order.....		12	13	12.3	10.4		9	10	12	13.2	15.6
Rate produced by present scales.....		11.8	13	13.6	10.4		9	10.5	12	13.2	15.6
Rate produced by scale II.....		12.9	14.1	13.6	10.4		9	10.5	12	13.2	15.6
Present rate.....		14	15	14.5	12.5		11	12	14	15	17.3
Proposed rate.....		15	16								
<b>Iola Group:</b>											
Mileage.....	572	647	616	364	134	328	420	511	508	753	800
Key-point rate fixed by Commission's order.....		13.8	14.9	14	11.8	7	11	12	14	15	17.7
Rate produced by present scales.....		13.8	14.9	15.6	11.8	7.7	11.2	12.6	14.1	15.3	17.7
Rate produced by scale II.....		15	16.2	15.6	11.8	7.7	11.2	12.6	14.1	15.3	17.7
Present rate.....		16	17	16	14	9	13	14	16	17	19.5
Proposed rate.....		17	18								

<sup>1</sup> Shown only where consolidation of scale territories I and II necessitates a change in present by-point rates.

By Order 28 and our Fifteenth Section Orders Nos 909 and 1030 the following disposition of fractions in the publication of rates is permitted: Less than one-fourth is omitted; one-fourth and less than three-fourths is made one-half; three-fourths or over is increased to the next whole number. As a study of the above table will reveal, the application of the rules disposing of fractions has disturbed somewhat the relationship of rates to the key points as fixed by our order. For example, from Mason City and Hannibal to Chicago the key-point rates were 10 and 8.8 cents, respectively; they have become 12 and 11 cents, respectively. A second application of these rules will cause a further disturbance in the relationship of these rates. This we believe should be avoided. Therefore, in constructing new key-point rates we have taken the key-point rates prescribed by our order as a basis. To these rates we have added the difference between the present flat scale rates as shown in line 3 of each section of the table and the flat scale II rates as shown in line 4. To the sums thus ascertained we have added the increase of 2 cents provided for by Order 28 and have then applied the rules disposing of fractions.

The following example will illustrate: From Mason City, Iowa, to Milwaukee, Wis., a key point, the rate fixed by our order was 9.8 cents. The rate which would apply under an average of the present scales is also 9.8 cents. The rate which would apply under scale II is 10.7 cents. The difference between 9.8 cents and 10.7 cents is 0.9 cent. This amount added to the key-point rate fixed by our order produces a rate of 10.7 cents. Plus this rate by 2 cents and apply the rule for the disposition of the fraction and a rate of 12.5 cents is produced, which is the rate suggested in the table as the new key-point rate from Mason City to Milwaukee. The present rate from Mason City to Milwaukee is 12 cents. This rate is made in the following manner: To the rate of 9.8 cents prescribed in our order, 2 cents has been added in compliance with Order 28, which produces 11.8 cents. The fraction being over three-fourths, the rate is raised to 12 cents. If the increase of 0.9 cent brought about by the consolidation of the two territories is added to the present rate, a rate of 12.9 cents results, and this rate under the rules governing the disposition of fractions would be raised to 13 cents, or one-half cent higher than the rate produced by the formula we have suggested. We believe that similar precautions should be taken in fixing the scale rates to avoid as much as possible disturbance of approved relationships. The formula suggested for increasing the key-point rates where there is a movement within or through what is now scale territory I will result in these rates being increased in the same relative proportion as the scale rates.

Of the proposition set forth in the rule to show cause, there remains for consideration the matter of applying an arbitrary where a joint line haul is involved. We do not feel that an arbitrary should be added. We found in our original report, page 248, that, "No distinction in rate is made for hauls over more than one line. Such does not seem to have been the practice of carriers in this territory with reference to cement."

We do not believe that the measure now suggested for the scale rates will result in any appreciable diminution of the carrier's revenues, but if the use of the short-route distances as a measure of the rates does result in any loss of revenues to the carriers, it seems reasonably certain such loss will be more than offset by the increase in rates resulting from the consolidation of scale territories I and II on the higher level of scale II.

From certain producing points in Indiana and Michigan to points in scale territory I the carriers were required by our order to establish rates on the basis of scale I. The change in rates in scale territory I necessitates a similar change in the rates from Michigan and Indiana. We find appropriate their increase to the basis of scale II in the framing of the new rates.

At Oglesby, Deer Park, La Salle, and Utica, Ill., points situated in close proximity, are located competing cement mills. Our order did not provide for the grouping of these points. At the argument it was contended that these mills should be grouped and given the same rates. The carriers have signified willingness to group the points and we see no reason why this should not be done. We accordingly so find.

The western boundary of scale territory II was placed at the Missouri River. The Kansas gas belt was, however, given scale II rates into scale territory II. At the argument a representative of the Kansas gas-belt mills contended that the location of the boundary of scale territory II at the Missouri River and the placing of the gas-belt mills in scale territory III, subjected those mills to the payment of prejudicial rates to points in scale territory III. It was contended that traffic conditions in eastern Nebraska and eastern Kansas are such as to justify in this territory as favorable rates as fixed for the territory between the rivers. In our original report, page 239, we found that the density of traffic in southeastern Kansas was fairly comparable with the density of traffic between the rivers. The density of population in the eastern portions of Kansas and Nebraska seems also to compare favorably with the density of population in Iowa. A representative of the Lincoln, Nebr., Commercial Club appeared at the argument and asked to be heard on the matter of rates to Lincoln from the gas belt. He contended that the present rates placed Lincoln at an undue disadvantage in marketing

cement in eastern Nebraska in competition with Omaha. The present rate from the gas-belt mills to Lincoln is 15.5 cents. To Omaha, which is one of the key points, we fixed a rate of 11 cents, or slightly under scale II. This rate has been increased to 13 cents, so that there is a differential of 2.5 cents between the rates to Lincoln and Omaha. While we are not to be understood as committing ourselves in any way as to whether eastern Nebraska and Kansas should be included in scale territory II, we are willing to consider an appropriate petition to reopen the case on this question.

A representative of the Kansas gas belt interests also contended that the carriers had not complied with our order in publishing rates from the gas belt to points intermediate to St. Louis on the line of the St. Louis-San Francisco and to points intermediate to Omaha and Sioux City on the lines of the Missouri Pacific and the Chicago, St. Paul, Minneapolis & Omaha. At page 237 of our original report we said: "We shall expect the carriers to check in the rates to the intermediate points upon the basis of Lorenz scales I and II." It is contended that this placed upon the carriers the obligation of checking in, from the gas belt, rates on basis of scale II to points intermediate to St. Louis, Omaha, and Sioux City. With this contention we do not agree. By "intermediate points" as used in the sentence quoted we had in mind points in the territory bounded by the key points. Our order gave the carriers permission to deviate from the fourth section at intermediate points upon the indirect routes. The lines above mentioned do not constitute the short routes from the gas belt to St. Louis, Omaha, and Sioux City, and the carriers are not therefore required to maintain the St. Louis, Omaha, and Kansas City rates as maxima at intermediate points on those lines. The carriers have apparently complied with our order in the publication of the rates referred to.

Our attention was again called at the argument to the seemingly somewhat low level of rates applying to the intrastate transportation of cement within certain of the states in the territory covered by our investigation. We commented on the intrastate rate situation in our original report as follows:

When the order instituting this investigation was served it was not contemplated to put in issue the question of relationship between interstate and state rates. This subject has, however, been referred to in the case during the course of the hearing. It is manifest that if a general solution is to be reached applicable to the entire territory, approximately the same general level should prevail throughout large areas without regard to state boundary lines. The state of Michigan in recognition of the necessity for uniformity has stated that it would await this Commission's report in the present case before fixing its state rate adjustment.

In Illinois the present level of cement rates is materially below the central freight association scale and Lorenz scale I. The situation is developed in 52 I. C. C.

detail by witnesses for the central freight association lines and particularly by the Illinois Central. Depressed rates seem to have developed from the unwillingness of the carriers to place certain Illinois destinations upon the central freight association level when that scale was agreed upon for central freight association territory, and this in turn was due to the unwillingness of the carriers serving the Chicago market to increase their Illinois rates. These rates, therefore, though subnormal, are rates which were voluntarily established by the carriers. The establishment of Lorenz scale I in Illinois would place Illinois destinations upon a substantial rate parity with destinations in other states in central freight association territory.

At the time of the issuance of our report we did not consider the record sufficient to enable us properly to deal with the matter of intrastate rates in our order. Since nothing of value has been added to the record in this regard, the same situation as to the record now exists with respect to whatever relief is within the Commission's province to afford. If an adjudication by the Commission of the lawfulness of these rates is desired, an appropriate complaint may be presented.

On argument our attention was directed to the results reached by averaging scale rates when a number of territories are traversed by the movement. It is theoretically possible that under the rule prescribed the rate on a long haul, from Chicago to Frannie, Wyo., would be but 38 cents for a haul of 1,392 miles while from Kansas City to the same destination the scale-rate average would be 40 cents. This is due to the fact that the lower scale rates bring down the average for the longer haul, whereas the shorter haul being in a high scale territory carries the higher rate. The average haul for cement, however, is perhaps not over 250 miles. Moreover, the amalgamation of the territories now under scale I and scale II will largely eliminate situations of this kind where practical injustice results. If after the amalgamation of these two territories situations of this character still are found, they may be brought to our attention.

The Director General has not been made a party to these proceedings and no order will therefore be entered against him requiring the changes we have suggested. We shall, however, modify our original order to conform to the changed findings herein.

52 I. C. C.

No. 9989.

GEORGE C. HOLT AND BENJAMIN B. ODELL, AS  
RECEIVERS OF AETNA EXPLOSIVES COMPANY,

v.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY  
ET AL.

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*Submitted November 1, 1918. Decided February 13, 1919.*

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1. Charges on new tank cars from Milton, Pa., Sharon, Pa., and Warren, Ohio, to points of destination in the southeast, based on combination of the official classification rating to the Virginia cities or Ohio River crossings and the southern classification rating or commodity rates beyond, found unreasonable and unlawful to the extent that they exceeded lower combination charges applicable via gateways through which the cars moved.
2. Charges on cars forwarded from Milton computed at the rating provided in the southern classification found to have been illegal to the extent that they exceeded the charges that would have accrued at the combination of the official and southern classification ratings. Reparation awarded.

*Winthrop & Stimson and George G. Reynolds* for complainants.  
*Alexander M. Bull, M. S. Connelly, and George R. Allen* for  
defendant carriers.

*R. Walton Moore* for Director General of Railroads.

#### REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATTCHISON.

McCHORD, *Commissioner*:

In this case a proposed report by the examiner was served on the parties, and no exceptions were filed. On December 28, 1917, the federal government assumed control of the principal defendants. The Director General was made a party defendant by supplemental complaint. The complainants and the Director General state that they do not desire to submit additional evidence. The case will, therefore, be disposed of on the record considered by the examiner.

Since the hearing, and on June 25, 1918, as the result of General Order No. 28 of the Director General, the rates involved have been increased. The reasonableness of the increased rates can not be determined on this record. The rates referred to hereinafter are those in effect previous to June 25, 1918.

During the period between November 9, 1915, and July 25, 1916, the Aetna Explosives Company, hereinafter called the complainant,  
52 I. C. C.

forwarded a number of new empty tank cars from Milton, Pa., Sharon, Pa., and Warren, Ohio, to various sulphuric-acid manufacturing points in Georgia, Alabama, Mississippi, South Carolina, Tennessee, and Louisiana. The complaint, filed November 26, 1917, alleges that the rates charged for the movement of these cars were unjust and unreasonable in that they exceeded lower combinations of intermediate rates. Reparation is asked.

Milton is a point in trunk line territory 66 miles north of Harrisburg, Pa. Sharon and Warren are in central freight association territory 70 miles and 80 miles, respectively, north of Pittsburgh, Pa. All are in official classification territory. The cars in question were routed by the complainant, some through Virginia cities, Lynchburg, Petersburg, Norton, or Bristol, others through Louisville, Ky., or Cincinnati, Ohio, Ohio River crossings, and junctions south thereof.

There were and are joint through class rates, governed by the southern classification, from interior eastern trunk line points, including Milton, to points south of the Potomac and Ohio rivers and east of the Mississippi River, applicable via the Virginia cities gateways. As a rule through rates on traffic from central freight association territory to destinations in the southeast, moving via the Virginia cities, or from trunk line or central freight association territories moving via Ohio River crossings, are made by combination of the rates to the gateways and the rates established by the southern lines, subject, respectively, to the official and southern classifications.

Except where specific commodity rates are named the rates on railroad cars are published in the classifications. The official classification provides a rate of 4.2 cents per mile and the southern classification a rate of 6 cents per mile on tank cars. Inasmuch as joint class rates from Milton to southeastern points are subject to the southern classification, the southern classification rating of 6 cents per mile was charged on all cars from Milton routed by way of the Virginia cities gateways. The charges assessed on cars from Sharon and Warren, and from Milton when routed via Ohio River crossings, were based on the official classification rating for the movement in official classification territory and either the southern classification or specific commodity rates from Cincinnati or Louisville for the movement within southern classification territory.

The complainant contends that the charging of rates on cars forwarded from Milton via the Virginia cities which exceeded the combination of the local rates was unreasonable and in violation of the fourth section of the act. It also contends that it was unreasonable and a departure from the provisions of the classifications to

52 I. C. C.

assess charges on cars moving via the Virginia cities that were higher than would have accrued if based on the distances from the points of origin to destination via the particular Virginia city through which the lowest combination could be figured, regardless of the junction specified, computed at 4.2 cents per mile in official classification territory and 6 cents per mile in southern classification territory. With respect to cars which moved through Ohio River crossings it is contended that the charges should not have exceeded those based on the lowest available combination to and from the gateway through which the cars actually moved.

The following tables show the charges assessed and the lowest combinations for representative movements:

## CHARGES ASSESSED AND LOWEST COMBINATIONS VIA VIRGINIA CITIES.

Destination.	Routed via—	Miles to gateway.	Miles from gateway.	Combination charges. <sup>1</sup>	Charges assessed.
From Milton to—					
Atlanta, Ga. <sup>2</sup> .....	Norton, Va.....	627	340	\$46.73	\$52.02
Roanoke, Ala. <sup>3</sup> .....	do.....	627	436	54.71	60.00
Troy, Ala. <sup>4</sup> .....	Petersburg, Va.....	329	781	62.84	65.88
Savannah, Ga. <sup>5</sup> .....	Lynchburg, Va.....	364	471	43.55	48.42
Roanoke, Ala. <sup>6</sup> .....	Bristol, Va.....	529	424	49.88	58.26
From Sharon to—					
Savannah, Ga.....	Petersburg, Va.....	510	479	50.16	61.62
Charleston, S. C.....	do.....	510	370	43.62	46.97

## CHARGES ASSESSED AND LOWEST COMBINATIONS VIA OHIO RIVER CROSSINGS.

From Milton to—					
Gulfport, Miss.....	Louisville, Ky.....	671	742	\$72.70	\$84.12
Roanoke, Ala.....	do.....	671	565	64.30	69.96
Hattiesburg, Miss.....	Cincinnati, Ohio.....	557	719	66.53	75.90
From Sharon to—					
Roanoke, Ala.....	do.....	314	584	50.45	51.61
Troy, Ala.....	Louisville, Ky.....	428	543	51.94	57.61
Meridian, Miss.....	Cincinnati, Ohio.....	314	634	51.23	51.23

<sup>1</sup> Combination charges include minimum allowance of 75 miles to carriers in southern classification territory.

<sup>2</sup> Short line distance 839 miles via Lynchburg, Va.

<sup>3</sup> Short line distance 935 miles via Lynchburg, Va.

<sup>4</sup> Short line distance 1,041 miles via Lynchburg, Va.

<sup>5</sup> Short line distance 808 miles via Richmond, Va.

Both the official and southern classifications provide that the mileage rates on railroad cars will be computed on the basis of the shortest working distances, with certain minimum charges. The complainant was entitled, therefore, to the benefit of the shortest working routes between points in each classification territory, or, in other words, to charges computed on the basis of the shortest distances to and from the particular gateway specified common to both territories. This is not disputed by the defendants. It is said on behalf of the Pennsylvania lines that charges to the Ohio River or Virginia cities were assessed on all cars moving on combination rates on the basis of the shortest distances to the junctions through which the cars



moved, although the movement may have been over a longer route. How the charges of the southern lines were determined does not appear of record.

But the complainant argues that the fact that it routed a car through a particular Virginia gateway should not deprive it of the benefit of a lower charge if applicable via a route through some other Virginia city. Otherwise, it is said, the longer routes would be debarred from sharing in this traffic as a shipper would not knowingly forward his shipments over a route taking a higher rate. This contention can not be sustained. If the cars had not been specifically routed the complainant would have been entitled to the lowest combination of rates or charges from point of origin to destination, but having routed the cars through particular junctions it can not complain because a lower rate might have been obtained via some other junction. Neither of the classifications prescribed the manner of constructing combination rates to or from points in the territory covered by the other but provided merely for the computation of the charges between points in their respective territories. The Commission has said in its Tariff Circular 18-A and in many decided cases that if no specific rate from a point of origin to a point of destination of a through shipment is provided, and no specific manner of constructing the combination rate is prescribed, the lowest combination of rates applicable via the route over which the shipment moves is the lawful rate for that shipment.

The application of the southern classification rating to cars forwarded from Milton to the various points of destination via the Virginia cities was predicated on the fact that the class rates to the same points were subject to that classification. It does not follow from this, however, that rates on railroad equipment, which are named in the separate classifications, should be determined by the particular classification which governs the class rates. Since the tariffs did not provide the rates, charges should have been computed at the ratings published in the classifications for the movement within their respective territories. The defendants did not undertake to justify the maintenance of the through rates on the basis of the southern classification rating, which obviously resulted in higher charges than would have accrued under the combination ratings, and agreed to provide for combination rates in the future.

Upon consideration of all the facts and circumstances of record, we are of opinion and find, that the charges assessed by the defendants on cars which moved under combination rates were unlawful and unreasonable to the extent that they exceeded those that would have accrued on the basis of the short-line workable routes to and from the gateways through which they moved, or by the combination

52 I. C. C.

of the official classification rating to the gateways, and the southern lines commodity rates beyond; and that the charges assessed on cars forwarded from Milton, based on the southern classification rating through to destination, were illegal to the extent that they exceeded the charges that would have accrued at the combination of the official and southern classification ratings to and from the gateways through which the cars moved. We further find that the complainants paid and bore the charges at the rates herein found unreasonable and unlawful and that they were damaged to the extent that the charges paid exceeded the charges that would have accrued at the rates herein found reasonable and lawful, and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and the complainants should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

52 I. C. C.

No. 10026.<sup>1</sup>

## ARMOUR &amp; COMPANY

v.

## EL PASO &amp; SOUTHWESTERN COMPANY ET AL.

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*Submitted October 14, 1918. Decided February 13, 1919.*

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On complaint that allowances paid by defendants for the use of the privately owned refrigerator cars to transport fresh meat and packing-house products within the territory west of El Paso, Tex., Albuquerque, N. Mex., Salt Lake City and Ogden, Utah, are less than reasonable, *Held*: That so long as it is necessary or permissible for complainants to furnish refrigerator cars in which to transport their products, the allowance for the use thereof should be 1 cent a mile on the loaded and empty movements.

*R. D. Rynder* for Swift & Company; *H. K. Crafts* for Armour & Company; *R. R. Hargis* for Wilson & Company; and *L. M. Walter, John H. Burchmore, and H. L. Osman* for Morris & Company.

*T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company; *Fred H. Wood* for Southern Pacific Company; and *H. A. Scandrett* for Union Pacific Railroad Company.

*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

## DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND DANIELS.

It is alleged in these complaints that defendants have failed to provide refrigerator cars suitable for transportation of fresh meat and packing-house products over their respective lines; that it is and has been necessary for complainants to furnish the cars; that the compensation paid by defendants for the use of cars furnished by complainants is and has been inadequate; and that just, fair, and adequate compensation should not be less than 1 cent a mile for the loaded and empty movements, or an equivalent amount if payment is to be made on the loaded movements. The Commission is asked, under the authority conferred upon it by the amendment to the act of May 29, 1917, to prescribe not less than 1 cent a mile on loaded and empty movements, as reasonable compensation for refrigerator cars furnished by complainants and used by defendants.

The territory involved in these cases is that part of the country west of El Paso, Tex., Albuquerque, N. Mex., Salt Lake City and

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<sup>1</sup> This report also embraces No. 10026 (Sub-No. 1), *Swift & Company v. El Paso & Southwestern Company et al.*; No. 10026 (Sub-No. 2), *Wilson & Company et al. v. Same*; and No. 10026 (Sub-No. 3), *Morris & Company v. Same*.

Ogden, Utah, hereinafter called the transcontinental zone, and but five carriers are defendants. In that part of the country lying east of the transcontinental zone the allowance paid by carriers for the use of privately owned refrigerator cars is 1 cent per mile for loaded and empty movements. The northern transcontinental lines, such as the Northern Pacific, Great Northern, and Chicago, Milwaukee & St. Paul, make the allowance of 1 cent throughout their entire systems. In the transcontinental zone the allowances paid by the defendants are as follows:

*El Paso Southwestern, I. C. C. No. 925.*—Lines east of El Paso, 1 cent per mile; lines west of El Paso,  $7\frac{1}{2}$  mills per mile.

*A. T. & S. F. Railway, I. C. C. No. 6626.*—Six mills per mile for 800 miles;  $7\frac{1}{2}$  mills per mile for excess over 800 miles, when cars are loaded with freight requiring refrigeration or refrigerator cars used on account of climatic conditions. Six mills per mile, regardless of distance, when loaded with freight other than named. No mileage allowance paid when moving empty.

*Western Pacific R. R., I. C. C. No. 146.*—Other than P. F. E. cars, 6 mills per mile for distance up to 800 miles,  $7\frac{1}{2}$  mills per mile for distance in excess of 800 miles, when cars are loaded with perishable freight or freight requiring the protection of refrigerator cars on account of climatic conditions. Six mills per mile, regardless of distance, when loaded with other freight. No mileage allowance paid for empty movement.

*S. P. L. A. & S. L. R. R., I. C. C. No. 331.*—Six mills per mile for distance up to 800 miles,  $7\frac{1}{2}$  mills per mile for distance in excess of 800 miles, when loaded with freight requiring refrigeration or freight requiring protection from climatic conditions. Six mills, regardless of distance, when loaded with other freight. No mileage allowance paid for empty movement.

*Southern Pacific R. R., I. C. C. No. 3467.*—Six mills per mile for distance up to 800 miles,  $7\frac{1}{2}$  mills per mile for distance in excess of 800 miles, on perishable freight or freight requiring refrigerator-car protection on account of climatic conditions. Six mills per mile, regardless of distance, on other freight. No mileage paid for empty movement.

In view of the fact that no allowance is made by defendants in the transcontinental zone for empty movements, and less than 1 cent for loaded movements, the amount paid by them is less than one-half that regarded as proper throughout the remainder of the United States.

Complainants are engaged in the meat-packing business at points on the Missouri River; Chicago, Ill.; Fort Worth, Tex.; Wichita, Kans.; Oklahoma City, Okla.; San Francisco, Cal.; and numerous other points. Swift & Company are representative of complainants, and shipments of frozen meats, chilled carcass beef, and dressed lambs are made by them throughout the transcontinental zone. The principal movement is from packing houses on the Pacific coast to Salt Lake City; Denver, Colo.; Fort Worth, Tex., and local points within the zone. Westbound shipments are made to branch houses in California, and they are principally sweet pickled meat, a highly

perishable commodity. The shipments of fresh meat and sweet pickled meat require for safe transportation what are known as meat or beef refrigerator cars. These cars are so constructed that the load of fresh meat may be hung from the roof, and they have iron brine tanks in both ends, in which crushed ice and salt are placed so the temperature in the car may be kept down to a degree which will avoid the spoiling of the meat en route. It is asserted by complainants that refrigerator cars furnished by defendants are not suitable for the transportation of fresh or pickled meats, because they are not properly constructed.

These cases were heard in connection with *In the Matter of Private Cars*, Docket No. 4906, and evidence submitted in that case with respect to financial results to complainants from the use of their refrigerator cars by carriers in the country generally was resubmitted for consideration here. It is not necessary to review that evidence in these proceedings, in view of the attitude of the defendants hereinafter referred to. It is sufficient to state that in the *Private Car Case*, 50 I. C. C., 652, the allowance by carriers in that part of the country outside the transcontinental zone of 1 cent on loaded and empty movements of refrigerator cars furnished by shippers was approved.

It is admitted by complainants that shipments of fresh meat to transcontinental points from the eastern producing points are not large, and it is stated by some of them that the amount is negligible. Shipments within the transcontinental zone are relatively larger, as shown by the following exhibit, which gives the shipment of fresh meat in carloads by Swift & Company for the year 1917 to points in the territory where the allowances complained of are paid:

Date of shipment.	Point of shipment and destination.	Car No.	Initial.	Date of shipment.	Point of shipment and destination.	Car No.	Initial.
1917.	Fort Worth, Tex., to—			1917.	Reno, Nev., to—		
Feb. 1	Morenci, Ariz. ....	11268	SRL.	Sept. 24	San Francisco, Cal. .	10635	SRL.
13	Do. ....	12328	SRL.	Aug. 16	Auburn, Cal. ....	12468	SRL.
20	Clifton, Ariz. ....	13490	SRL.	Sept. 11	Salt Lake, Utah. ....	11999	SRL.
Mar. 12	Bisbee, Ariz. ....	12505	SRL.	Aug. 14	Do. ....	11568	SRL.
13	Morenci, Ariz. ....	13475	SRL.	Aug. 7	Do. ....	12046	SRL.
15	Bisbee, Ariz. ....	13172	SRL.	July 20	Do. ....	12617	SRL.
18	Do. ....	13591	SRL.	11	Do. ....	12156	SRL.
19	Do. ....	10355	SRL.	June 14	Chicago, Ill. ....	10836	SRL.
26	Do. ....	12841	SRL.	8	Do. ....	10836	SRL.
Apr. 5	Clifton, Ariz. ....	12636	SRL.	5	Do. ....	11942	SRL.
12	Bisbee, Ariz. ....	12536	SRL.	2	Do. ....	10596	SRL.
24	Do. ....	16209	SRL.	May 28	Salt Lake, Utah. ....	13213	SRL.
May 8	Do. ....	13531	SRL.	25	Chicago, Ill. ....	11232	SRL.
14	Morenci, Ariz. ....	12068	SRL.	3	Salt Lake, Utah. ....	11489	SRL.
June 7	Clifton, Ariz. ....	11723	SRL.	Apr. 30	New York, N. Y. ....	10475	SRL.
11	Morenci, Ariz. ....	12151	SRL.	26	Philadelphia, Pa. ....	16496	SRL.
July 7	Tyrone, N. Mex. ....	10378	SRL.	11	Do. ....	11974	SRL.
Aug. 21	Do. ....	10774	SRL.	Sept. 12	Goldfield, Nev. ....	7223	ARL.
Sept. 21	Do. ....	10719	SRL.		South Omaha, Nebr., to—		
Oct. 17	Do. ....	11956	SRL.	Aug. 13	San Francisco, Cal. .	11092	SRL.
Nov. 22	Do. ....	10756	SRL.	24	Denver, Colo., to—		
					Portland, Oreg. ....	12722	SRL.

When a refrigerator car of a shipper is transported over lines of defendants east of Ogden and El Paso, they make an allowance of 1 cent a mile on the loaded and empty movements. For example, if a shipment originates at St. Joseph, Mo., destined to Los Angeles, Cal., via the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, the latter will allow 1 cent a mile up to Albuquerque, and the lower amounts beyond. There is no fact connected with the physical transportation which warrants a lower allowance west of Ogden and El Paso than east thereof; in the mountainous country west of those points the car may be subjected to more severe usage than east thereof; and the cost of operation, considering repairs and depreciation, is at least as great in the transcontinental zone as in any other part of the country.

The position of the defendants was stated by a witness for the Santa Fe to be that economic handling of trains requires the reduction of empty hauls as much as possible; that there are a number of other shippers than meat packers who own refrigerator cars and do a transcontinental business; and that it is with the idea of discouraging the use of all privately owned refrigerator cars in the transcontinental zone that different mileage allowances are paid for their use than are paid elsewhere.

It is insisted by the defendants that the situation in the transcontinental zone is different from that in the official or southern classification territories, because they have a heavy empty movement of their own equipment westbound and they ought, as far as possible, to use their own westbound cars to transport any traffic that can be transported therein.

Exhibits were filed to show what is termed to be an extraordinary westbound empty movement of refrigerator cars on the lines of the defendants. It is shown that for the year 1917 the empty mileage on the Santa Fe system was 27.60 per cent of the total movement of refrigerator cars, and that cars of complainants moved empty 47.19 per cent. It is argued from this that the refrigerator cars of complainants are a burden upon defendants and that increased mileage allowances would result in a larger use of private cars. It is further shown that the Santa Fe hauled westbound 22,870 empty refrigerator cars during the year 1917. It is argued that with its westbound trains carrying large numbers of empty cars, naturally the carrier has no desire to use cars of others and pay mileage for their use under load which load could as well be carried in its own equipment; and that increased allowances would not only increase the westbound empty movement, but would also increase the east-bound empty movement, because about one-half of complainants' cars move empty. The Southern Pacific and the Los Angeles & Salt Lake

show that substantially the same empty hauls are experienced on their lines as on the Santa Fe.

The Santa Fe, through its subsidiary, the Santa Fe Refrigerator Dispatch, operates approximately 10,000 refrigerator cars, and the Southern Pacific and Union Pacific, through their subsidiary, the Pacific Fruit Express, operate approximately 15,000. It is insisted that both companies have cars sufficient to handle all perishable products into and out of California and to supply cars for all traffic offered by shippers, including the packers, except alone shipments of fresh meat. It is admitted by them that they do not own cars suitable to transport carcass meat, but it is insisted that the movement of such shipments is so small as not to be worth considering.

The showing made was by the Santa Fe and the Southern Pacific. The Western Pacific and Los Angeles & Salt Lake have contracts with the Pacific Fruit Express to supply them with refrigerator cars. The Union Pacific and Southern Pacific pay the Pacific Fruit Express three-fourths of a cent on the loaded and empty mileage in the transcontinental zone. It appears that the Western Pacific also pays a different allowance than is paid to private owners, although the amount is not stated of record. No evidence was submitted in behalf of the Western Pacific and El Paso & Southwestern.

There is no contention by defendants that an allowance of not less than 1 cent on the loaded and empty movements of refrigerator cars in the transcontinental zone would be excessive had the defendants no cars to supply shippers' demands or were shippers required to furnish all the cars.

The movement of chilled fresh meat throughout the United States is large and continuous. Packing plants and branch houses of complainants are located at many points, including numerous points in the transcontinental zone. The defendants publish in their tariffs allowances to shippers for furnishing refrigerator cars in which are transported fresh meat and other articles. The law is well settled that the duty of a common carrier is to furnish equipment for transportation of articles it advertises to carry. These defendants publish rates on fresh meats in carloads to all points in the transcontinental zone. There is no restriction in their tariffs with respect to shippers furnishing refrigerator cars. On the other hand, they assert that they are able to and will furnish suitable cars in which to transport all shipments tendered by complainants, except carcass meat and, during the heated months, the highly perishable sweet pickled meats.

The act approved May 29, 1917, amending section 1 of the act to regulate commerce provides, in part, as follows:

The Commission shall, after hearing, on a complaint, or upon its own initiative without complaint, establish reasonable rules, regulations, and practices

with respect to car service, including the classification of cars, compensation to be paid for the use of any car not owned by any such common carrier and the penalties or other sanctions for nonobservance of such rules.

There is no contention by defendants that the Commission does not have power under the amended act to prescribe the amount of compensation to be paid for the use of complainants' cars. The language of the amended act is clear, plain, and unambiguous. It confers the power claimed by complainants. The complainants ask that the same allowance be paid for the use of their cars as is paid by carriers in other parts of the country. The only question is whether such an allowance is proper under the circumstances.

The defendants do not dispute that 1 cent per mile on the loaded and empty movement is no more than reasonable on their lines outside the transcontinental zone. One of their witnesses testified that 1 cent a mile would not provide more than cost of repairs and depreciation. It seems to be established that an allowance of 1 cent is not unreasonable in the transcontinental zone, as well as elsewhere in the country, except that these defendants assert they have cars enough of their own to supply shippers' demands.

In the *Private Car Case* we held that the allowance of three-fourths of a cent for the loaded and empty movement of tank cars be increased to 1 cent. In the transcontinental zone the allowance for use of tank cars by defendants has been for many years three-fourths of a cent per mile on the loaded and empty movements.

There is no doubt that if the defendants have equipped themselves with suitable cars to transport shipments offered by the complainants they may refuse to transport the latter's private cars. *Procter & Gamble Co. v. C., H. & D. Ry.*, 19 I. C. C., 556, 560; *Atchison Railway Co. v. U. S.*, 232 U. S., 199. In the latter case at page 214 the court said:

Whatever transportation service or facility the law requires the carrier to supply, they have the right to furnish. They can therefore use their own cars and can not be compelled to accept those tendered by the shipper on condition that a lower freight rate be charged.

The right to furnish the equipment is a very different thing from that of making allowances less than reasonable to shippers who are compelled to furnish their own cars, for the purpose of discouraging the use thereof. The only defense of the allowances in issue is based on the ground that the defendants have sufficient suitable cars of their own to supply shippers, except those suitable for fresh meats; and that there is a large empty westbound movement of their own cars.

52 I. C. C.



If it be a fact that defendants have suitable refrigerator cars to carry all shipments of complainants, or will secure such cars, and furnish them on demand, they have the legal right to furnish them, and may refuse to transport shipments in privately owned cars. They are privileged at any time to fulfill their common carrier obligations in this regard. Simple tariff provisions with respect to the matter will enable these defendants to furnish their own cars to all shippers to transport perishable commodities.

The defendants admit that they have not cars suitable for shipments of carcass meats, therefore shippers are compelled to furnish cars for such shipments. The payment therefore can not rightfully be made for the purpose alone of discouraging their use. The whole matter is in control of the defendants. They have but to equip themselves with proper cars and tender them to shippers. All questions with respect to payments by them for the use of private cars would then disappear.

Under the facts and circumstances shown of record, the Commission should find that the allowances now being paid by defendants for use of complainants' refrigerator cars are less than reasonable, and that for the future allowances of 1 cent a mile on the loaded and empty movements should be maintained.

**McCHORD, Commissioner:**

The above report is substantially that prepared by the examiner, which was served on the parties on June 13, 1918. On July 3 exceptions were filed by the defendants. No exceptions were filed by the complainants.

The complaints were filed in January and February, 1918. The federal government assumed control of the defendants on December 28, 1917. The complainant in the original proceeding and in Sub-Nos. 1 and 3 filed applications to supplement the complaints by making the Director General a party defendant, and the supplemental complaints were allowed by the Commission. The complainants notified the Commission that they did not desire to submit additional evidence.

On October 1, 1918, the Director General filed his answer in Sub-Nos. 1 and 3, but did not file answer to the original complaint. In the answers filed the Director General, among other things, denies that the complainants are entitled to the relief prayed or any other relief. It was also stated by him that he did not desire to submit evidence. In this connection it may be stated that the original and subcomplaints raise precisely the same issues. A determination with respect to them in one case will be applicable to the others.

The cases were set for argument, but the argument was canceled on agreement of the parties to submit the cases on briefs already filed. The cases are, therefore, submitted for determination.

It is contended that because the defendants publish rates for the transportation of fresh meat they are not thereby obligated to furnish cars suitable in which to transport such articles. This contention is not tenable.

It is also insisted by defendants that they may make any terms they see fit for the use of private cars, and that those terms do not properly call for the exercise of regulative power by the Commission. The allowances paid by defendants for the use of refrigerator cars of complainants are published in the defendants' tariffs on file with us. They are clearly subject to our jurisdiction. Section 15 of the act to regulate commerce provides that if the owner of property furnishes an instrumentality of transportation the charge and allowance therefor shall be no more than just and reasonable, and the Commission is empowered to determine what is a reasonable charge as a maximum to be paid by the carrier for the use of the instrumentality furnished. Furthermore, under the amendment to section 1 of the act approved March 29, 1917, we are given power to prescribe the compensation to be paid for the use of cars not owned by common carriers.

The argument is made that cars suitable for the transportation of fresh meats have never been furnished by any carrier and therefore no carrier ought to be required to furnish them. The answer to this is that the defendants make rates for the transportation of fresh meats and pay shippers for furnishing the cars. Under such circumstances the defendants may not be heard to assert that they have no duty in the premises.

Another contention is that there is practically no movement of fresh meats in the territory to which the allowances complained of are applicable, and therefore defendants do not need meat cars, and that it may not rightfully be held that it is their duty to furnish them. If it be true that there is no movement of fresh meat it is difficult to understand why defendants enter upon a controversy with respect to this matter. The fact is, however, that defendants have required complainants to furnish refrigerator cars for shipments of all packing-house products as well as fresh meats. The allowances made are for the use of refrigerator cars furnished by complainants, which include meat cars.

Since the defendants have been under federal control no change has been made in the allowances paid by them for the use of privately owned refrigerator cars. No order of the Director General has been made with respect to this matter.

52 I. C. C.

On consideration of all the facts and circumstances of record, including the exceptions of the defendants, and the provisions of the control act, we find that the facts and conclusion of the examiner are correct.

We, therefore, find that the payment by defendants of less than 1 cent a mile on the loaded and empty movements of refrigerator cars, including meat cars, which are furnished by complainants for the transportation of shipments made by them on the lines of defendants in and through that part of the United States west of El Paso, Tex., Albuquerque and Deming, N. Mex., and Salt Lake City, Utah, is, and for the future will be, unreasonable.

An order will be issued to carry out this finding.

Inasmuch as no amendment to the complaint in Sub-No. 2 has been filed, and as the allowances involved are with respect to the future, an order will be entered dismissing that complaint.

52 I. C. C.

No. 8305.<sup>1</sup>

## VIRGINIA PINE TIMBER COMPANY

v.

NEW YORK, PHILADELPHIA & NORFOLK RAILROAD  
COMPANY ET AL.

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*Submitted September 30, 1918. Decided February 17, 1919.*

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1. Upon further consideration, original finding and order herein, 50 I. C. C., 327, modified.
2. Rates on mine props, in carloads, from certain points in Delaware, Maryland, and Virginia to Shenandoah, Pa., and points taking same rates found to have been unreasonable. Reparation awarded.

*Ralph A. Koontz* for complainants.*Henry Wolf Bikelé* for defendants.

## SUPPLEMENTAL REPORT OF THE COMMISSION.

## BY THE COMMISSION:

This case was originally decided May 17, 1918, 50 I. C. C., 327. In the above-numbered complaints, seasonably filed, it was alleged, among other things, that the defendants' rates on mine props, in carloads, from points in Delaware, Maryland, and Virginia in what is known as the eastern shore territory, to Shenandoah, Pa., and points taking the same rates were unreasonable, and we were asked to prescribe reasonable rates and to award reparation on numerous shipments moving between July 31, 1913, and August 28, 1915, inclusive. We found that the rates, in effect when the cases were submitted, of 12.6 cents, from points on the defendants' lines north of New Church, Va., and 14.7 cents from all points on the New York, Philadelphia & Norfolk Railroad in Virginia, New Church to Cape Charles, inclusive, were, and for the future would be, unreasonable to the extent that they exceeded or might exceed 10.5 and 12.6 cents, respectively. This decision resulted in a disturbance of a long continued adjustment and required a shifting of the dividing line between the two originating groups from Exmore, Va., to New Church. We stated

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<sup>1</sup> This report also embraces No. 8305 (Sub-No. 1) *D. C. Armstrong v. Same*; No. 8305 (Sub-No. 3) *L. T. Brandon v. New York, Philadelphia & Norfolk Railroad Company et al.*; No. 8305 (Sub-No. 5) *Lycoming Timber & Lumber Company, Incorporated, v. New York, Philadelphia & Norfolk Railroad Company et al.*; and 8305 (Sub-No. 6) *Dennis Brothers Lumber Company, Incorporated, v. New York, Philadelphia & Norfolk Railroad Company et al.*

that under the circumstances no reparation would be awarded and no finding was made as to the rates applicable when the shipments moved which were the same as those in effect when the cases were submitted save for a 5 per cent increase, effective February 23, 1915, following *The Five Per Cent Case*, 32 I. C. C., 325. Upon complainants' petition for a modification of our finding with respect to reparation, these cases were reopened for reconsideration on the record as made.

The complainants urge that, in the absence of any finding as to the reasonableness of the rates in the past, our decision was not fully responsive to the allegations of the complaints and that we should have found that the rates charged on the shipments in question were unreasonable to the extent that they exceeded those prescribed for the future and that reparation should have been awarded. For the defendants it was urged that no order of reparation should accompany the revision of a long-established basis of rates.

Our former report shows the then existing rates from the respective groups as 12.6 and 14.7 cents, whereas it appears from a further tariff check that rates of 13.6 and 15.7 cents were then in effect, an increase of 1 cent per 100 pounds having been made in each of these rates following our supplemental order in *The Fifteen Per Cent Case*, 45 I. C. C., 303. We are of opinion and find that our former finding and order should be modified so as to provide for reasonable maximum rates 1 cent per 100 pounds higher than those prescribed.

While our order in these cases necessitated regrouping of some of the originating points, the rates prescribed were lower than those in effect from all points in the eastern shore territory, except from New Church to Exmore, Va., inclusive. No change was required in the rates of 12.6 cents from the excepted points as they did not exceed those prescribed as reasonable. Upon further consideration we are of opinion and find that the rates in effect on mine props during the period of movement and prior to March 25, 1918, were unreasonable to the extent that they exceeded 10.5 cents per 100 pounds from points north of New Church, viz: Loretto and Ocean City, Md., Ellendale, Del., Franklin City, Va. and points taking the same rates, and 12.6 cents per 100 pounds from all points on the New York, Philadelphia & Norfolk Railroad in Virginia, New Church to Cape Charles, inclusive; and that between March 25 and May 17, 1918, they were unreasonable to the extent that they exceeded the above-named rates by more than 1 cent per 100 pounds, the increase permitted under *The Fifteen Per Cent Case*.

We further find that the complainants made the shipments as described and paid and bore the charges thereon; that they were damaged to the extent that the charges paid exceeded those that would

52 I. C. C.

have accrued at the rates herein found to have been reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record and the complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

Apparently the Lehigh & New England Railroad Company participated in the movement of some of the shipments in No. 8305 (Sub-Nos. 1 and 6). That carrier is not a party defendant in those cases but may join in the payment of the reparation.

A supplemental order will be entered modifying our original order to the extent of permitting the defendants to publish rates on the basis of rates 1 cent per 100 pounds higher than those prescribed in that order. This is without prejudice to the increases on the basis provided for in General Order No. 28 issued by the Director General of Railroads.

HALL, *Commissioner*, dissents to the finding that reparation be awarded.

COMMISSIONER EASTMAN did not participate in the disposition of these cases.

52 L. C. C.

No. 9974.

TIOGA TANNING COMPANY

v.

PRESTON RAILROAD COMPANY.

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*Submitted July 1, 1918. Decided December 23, 1918.*

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Defendant's charge for switching traffic between complainant's plant and defendant's point of interchange with the Baltimore & Ohio Railroad at Hutton, Md., found unreasonable. Reasonable maximum charge prescribed and reparation awarded.

*Albert A. Doub* for complainant.

*A. Taylor Smith* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, MEYER, AND HALL.

BY DIVISION 3:

In its complaint filed November 17, 1917, as amended, the complainant, a corporation operating a tannery at Hutton, Md., alleges that the defendant's charge of \$6 per car for switching traffic between its plant and the defendant's point of interchange with the Baltimore & Ohio Railroad at Hutton is unreasonable. We are asked to prescribe a reasonable switching charge and to award reparation on shipments moved since August 25, 1917, the date on which the charge assailed became effective. The Director General of Railroads has relinquished control over the defendant carrier.

The main line of the Preston Railroad extends from Heil Run, W. Va., to Hutton, a distance of 25 miles. Its stock is owned by the Kendall Lumber Company, which has a mill at Crellin, Md., 2½ miles south of Hutton. The complainant's plant, which is served only by the defendant, is just south of Hutton, but the movement in question necessitates a crossing of the West Virginia-Maryland state line. The defendant's only connection is with the Baltimore & Ohio at Hutton. Shipments are billed to and from Hutton, and the switching charges, which are in no case absorbed by the line-haul carrier, are separately billed to complainant by the defendant.

Prior to August 25, 1917, the defendant's tariffs made no provision for the assessment of charges for the switching service rendered complainant, but under a contract between the parties the defendant

52 I. C. C.

collected \$3 per car for this service. The collection of this charge was unlawful. On the date mentioned the defendant published a charge of \$6 per car. On September 15, 1918, subsequent to the hearing, the charge was reduced to \$4 per car. It is not published as a switching charge, but as "the minimum charge between any two points on this road."

The record shows that about one-half of complainant's shipments were weighed. The complainant's witness testified that the former charge included weighing the cars, and it asks reparation on basis of \$2 per car for the switching service and \$1 for weighing. The defendant's tariffs do not provide a weighing charge and no such charge was or is made for the weighing of the complainant's shipments.

The interchange tracks of the two carriers mentioned are 785 yards from the complainant's tracks, and as the latter's tracks extend a maximum distance of 356 yards within its plant, the maximum length of movement from the interchange track is 1,141 yards. It was testified for the complainant that the cars are often "spotted" in close proximity to its point of connection with the defendant's tracks and are seldom moved to the extreme limits of complainant's tracks. It was testified by the defendant's witnesses that considerable additional movement is sometimes necessary after the cars are placed on the interchange tracks.

The switching is performed by the regular crew operating defendant's local train between Hutton and Crellin, or points south thereof. The evidence is conflicting as to the time consumed in the switching, the complainant stating that it does not exceed an average of 40 minutes daily, while for the defendant it is testified that from one to two hours daily is required. The evidence is also conflicting as to the grade of the tracks used, it being represented by the defendant's witnesses as from  $2\frac{1}{2}$  to 5 per cent, and by complainant as not exceeding 10 to 15 feet for the entire distance.

The charge assailed includes the switching of loaded and empty cars to and from the complainant's plant. It is urged by the complainant that as the incoming equipment is used almost without exception for outbound shipments, no service of consequence is performed by the defendant in connection with the movement of empty cars, except the removal from complainant's plant of such empties as it does not require. These cars are generally switched south to Crellin to supply the Kendall Lumber Company. The complainant averages about two carload shipments per day.

For the defendant it is contended that the \$3 per car charge formerly exacted was unduly low. The contract mentioned was entered into May 15, 1908. The \$6 charge is sought to be justified on the



ground of increased cost of operation and maintenance. The matter of determining the level of the present rate appears to have been left to the discretion of an industrial traffic expert employed by the defendant and he had no personal knowledge of the conditions or circumstances affecting this service.

The \$6 charge is compared for the defendant with the switching charges of several other roads at Cumberland, Md., Youngstown and Struthers, Ohio, Wampum, Pa., and other points which range from \$2 to \$6 per car, and it is contended that the charge here assailed compares favorably with some of the charges selected from these tariffs. In a number of instances the \$2 charges cited were absorbed by line-haul carriers where the revenue for the line haul exceeded certain amounts.

We find that the charge assailed was, and for the future will be, unreasonable to the extent that it exceeded or may exceed \$4 per car. We further find that the complainant made shipments and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to defendant for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

52 I. C. C.

No. 9907.  
COMMERCIAL CLUB OF OMAHA  
v.  
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

*Submitted October 10, 1918. Decided February 13, 1919.*

On complaint that summer excursion fares, effective during the season of 1917 between Omaha, Nebr., and points in the United States east of the Mississippi River and north of the Ohio and Potomac rivers, and in the Dominion of Canada, north of that territory, were unreasonable, unjustly discriminatory, and unduly prejudicial to the preference of Kansas City and St. Joseph, Mo., *Held*: That the evidence shows that the fare adjustment complained of was unduly prejudicial of Omaha to the preference of Kansas City and St. Joseph as alleged.

*C. E. Childe* for complainant.

*Kenneth F. Burgess* for Chicago, Burlington & Quincy Railroad Company; *Robert H. Widdicombe* for Chicago & North Western Railway Company; *J. N. Davis* for Chicago, Milwaukee & St. Paul Railway Company; *A. P. Humburg* for Illinois Central Railroad Company; *W. F. Dickinson* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company; *George A. Kelley* for Chicago Great Western Railroad Company; *D. P. Connell* for eastern lines; *B. M. Bukey* for Atchison, Topeka & Santa Fe Railway Company; and *R. Walton Moore* for Director General of Railroads.

REPORT OF COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND WOOLLEY.

*McCHORD, Commissioner:*

This case was the subject of a proposed report by the examiner. Exceptions were filed by complainant. Thereafter an amendment was filed making the Director General of Railroads a party defendant. Argument was then had and the case submitted for final disposition.

During the time round-trip summer excursion fares for the season of 1917 were still in effect, the complainant, a voluntary corporation, organized for the purpose of advancing the commercial interests of Omaha, Nebr., filed its complaint herein. It there alleged that, if the round-trip summer excursion fares then effective between Kansas City and St. Joseph, Mo., and points in the United States north of the Ohio and Potomac rivers and east of the Mississippi River, and

52 I. C. C.

in the Dominion of Canada, north of that territory, were reasonable, the fares between Omaha and the same destination territory were unreasonable. No evidence was adduced to show that the fares attacked were unreasonable in and of themselves. The complaint also alleged, and this is the special grievance, that the fares between Omaha and the destination territory were unjustly discriminatory and unduly preferred Kansas City and St. Joseph to the undue prejudice of Omaha.

The fares attacked expired by tariff limitations at the close of the season of 1917. Similar fares are usually valid only between May 15 and September 30, or June 1 and October 31, dependent upon whether they are short limit or season tickets and, also, upon the territory of destination.

The short-line distance from Kansas City to St. Louis, Mo., via the line of the Wabash Railway Company is 279 miles; from Omaha to St. Louis, Mo., via the same line, 414 miles. The short-line distance from Kansas City to Chicago, Ill., via the line of the Atchison, Topeka & Santa Fe Railway is 451 miles; from Omaha to Chicago, either by way of the line of the Chicago & North Western or the Chicago, Milwaukee & St. Paul railways, 488 miles. Complainant alleged that the differences in the fares, Kansas City and St. Joseph under Omaha, were wholly in the fares charged by the western defendants to Chicago and return and that such differences were not justified by the differences in the distances the passengers were carried from Omaha to Chicago as compared with the distances passengers were carried from Kansas City and St. Joseph to the same point; nor by the services rendered in each instance by the western defendants. The lines operating from St. Louis and Chicago provided summer excursion fares to the territory of destination for the season of 1917, which selling fares were used as basing fares in the construction of the fares attacked from Omaha and those from Kansas City and St. Joseph. Those fares were the same whether the travel was from Omaha, Kansas City, or St. Joseph.

It is incidentally stated in the complaint that a passenger riding upon a short-limit summer excursion ticket, valid for 30 or 60 days, from Kansas City and St. Joseph and return had the privilege of diverse routing, which was not accorded by the terms of similar tickets from and to Omaha. However, there is no definite allegation of the complaint that this absence of privilege was unreasonable or unjustly discriminatory, the specific allegation being that the fares contained in certain tariffs named in the complaint were violative of the act. The defendants state that the optional routing under the short-limit summer excursion ticket between Kansas City and the destination points was due to the fact that the Wabash Railway Company has no direct line between Kansas City and

Chicago; it carries passengers from Kansas City to Chicago via St. Louis, its only line. The direct lines, other than the Atchison, Topeka & Santa Fe Railway, between Kansas City and Chicago meet this competition by permitting a passenger to travel from Kansas City to Chicago via their lines and return to Kansas City via St. Louis.

The Commission is asked to establish for future summer excursion passenger traffic between Omaha and the destination territory designated round-trip fares which shall be just and reasonable in and of themselves, relatively reasonable, fair, and nondiscriminatory as compared with the summer excursion fares contemporaneously maintained between Kansas City and St. Joseph and the same territory. Generally speaking, through intermediate application the fares between St. Joseph and the destination territory are the same as the Kansas City fares.

Upon motion of six defendants whose rails reach Omaha, other carriers which reach Kansas City, namely, the Chicago & Alton Railroad, Atchison, Topeka & Santa Fe Railway, Missouri Pacific Railroad, and the St. Louis-San Francisco Railway companies, were, by order of the Commission, made parties defendant. Of the defendants the Chicago, Burlington & Quincy, the Chicago Great Western, the Chicago, Rock Island & Pacific, and the Missouri Pacific railways serve the three originating points; the Chicago & North Western and the Illinois Central railways reach Omaha but neither Kansas City nor St. Joseph; the Chicago, Milwaukee & St. Paul Railway serves both Omaha and Kansas City but not St. Joseph; the Atchison, Topeka & Santa Fe Railway serves both Kansas City and St. Joseph but does not reach Omaha; and the Chicago & Alton and the St. Louis-San Francisco railways, as between the three cities, serve Kansas City alone. The Atchison, Topeka & Santa Fe serves St. Joseph by way of a branch line, as does the Missouri Pacific. The latter has no line between Omaha and Chicago.

Under date of December 10, 1917, the complaint being then assigned for hearing on January 5, 1918, the six defendants reaching Omaha filed a motion to cancel the hearing and dismiss the complaint, for the reasons that the allegations of the complaint had to do with fares which then had expired by limitation and the abnormal conditions affecting transportation, requiring the curtailment of passenger service, made it uncertain whether summer excursion fares would be published during the season of 1918. It was stated that the subject matter of the complaint was therefore speculative, remote, and uncertain. This motion was denied by the Commission.

The defendants cite decisions of the Commission stating the law that the issuance of excursion fares is voluntary, permissive, and may

be omitted by the carriers so long as no undue discrimination results from their omission. As no discrimination or prejudice can result from the contemporaneous absence of summer excursion fares from Kansas City and Omaha, and as the Commission's authority to require removal of violations of the act inheres only as to those it finds to exist, defendants assert their belief, even if the fares were preferential in the year 1917, that the question is now moot and no order for the future should be entered during the period of war.

It is also contended that the Commission is without jurisdiction to prescribe joint fares between Omaha and points in the Dominion of Canada. The answer to this is that we have jurisdiction of the carrier in the United States from any point to the border line. It follows that no carrier in the United States can unduly prejudice a traveler or a locality in this country merely because it is party to a joint arrangement for through carriage. *Heater Car Service Regulations*, 50 I. C. C., 620; *Carey Mfg. Co. v. G. T. W. Ry. Co.*, 36 I. C. C., 203, affirming *International Paper Co. v. D. & H. Co.*, 33 I. C. C., 270.

The Commission's jurisdiction attached when the complaint and the answers of the defendants were filed. Defendants joined issue. We take it that our power to determine whether or not the fares were unjustly discriminatory or unduly preferential, during the season of 1917, may not be defeated by the fact that those fares had expired by tariff provision before the Commission could render a decision. For many years it has been the custom and practice of the carriers each year, as the summer season recurred, to provide excursion fares, restoring them by automatic tariff provisions or by filing new tariffs. This practice of publishing the fares and having them effective when the season indicated their use was a continuing one. Necessarily, there was a period, in one instance, where the fares lay dormant during the winter, and in the other, where for tariff clarity and to prevent the use of the fares for other than the specific purpose for which they were published, they were canceled. The tariff offer of the carriers to transport passengers at summer excursion fares had settled into a custom and practice, and that offer was nevertheless continuing although the fares from a tariff standpoint were held in abeyance or canceled during the periods of nonuse. If the complaint had been filed immediately upon the summer excursion fares becoming effective and the case had proceeded to submission in time for the Commission to determine the issue before the fares had expired, the jurisdiction would have been clear. The Commission looks to the substance and as a practical matter it appears the complainant is entitled to a finding of whether or not the fares were violative of the act during the season of 1917,

32 I. C. C.

even though that finding is barren of a predicate for future affirmative relief.

The normal basis for constructing summer excursion fares between Missouri River territory and the east is double the local fares from the points of origin to the basing points, in the present instance Chicago and St. Louis, plus the basing and selling summer excursion fares of the carriers thence. This was the basis used between Omaha and the destination territory. It was not the basis, although the defendants represented at the hearing admitted it should have been, used in constructing the fares between Kansas City and St. Joseph and the destination territory. The basing and selling fares beyond the gateways were the same as those used in constructing the Omaha fares, but the double locals to St. Louis and Chicago were not used. Arbitrary bases were applied because the Chicago & Alton Railroad Company exercised its individual right, against the protest of other carriers members of the summer tourist bureau, to construct the fares by the use of such arbitrary bases. The other carriers from Kansas City met this cut. Such carriers as the Atchison, Topeka & Santa Fe and the Chicago, Burlington & Quincy railways, having a large mileage west of Kansas City and operating through trains to Chicago via Kansas City, felt that they might as well meet the competition of the Chicago & Alton from Kansas City, as their trains had to go to Chicago in any event, and vacant space available in them would thereby pay revenue which otherwise might be lost to the Chicago & Alton. The other carriers serving Omaha as well as Kansas City met the competition.

The double one-way fare from Kansas City to St. Louis, made on the combination on St. Charles, Mo., using 2.4 and 2.6 cents per mile, found to have been justified in *Western Passenger Fares*, 37 I. C. C., 1, was \$13.50. The double one-way fare, Omaha to St. Louis, is \$20.30, so that fares between Omaha and the east, constructed on the St. Louis gateway should, if normal bases had been used, exceed fares between Kansas City and the east by \$6.80. But the basis used in constructing summer excursion fares between Kansas City and the east was \$11.20 between Kansas City and St. Louis, i. e., 2 cents per mile for double 279 miles, the distance by way of the short line of the Wabash Railway, extended to an even amount. Effective January 1, 1918, the basic passenger fare in the state of Missouri was increased to 2.5 cents per mile, so that the factor between Kansas City and St. Louis became \$14, thus decreasing Omaha's normal disadvantage over Kansas City to \$6.30.

The double one-way fare, Kansas City to Chicago, is \$21.70, made on a combination over Galesburg, Ill., 436.6 miles, Kansas I. C. C.

sas City to Chicago, at 2.4 cents per mile. Notwithstanding this basis, arbitrary bases of \$16.50, to points in northern Illinois, Wisconsin, and Michigan, except Detroit and Port Huron, Mich., and \$18 to other destinations, were used as the Kansas City-Chicago factor in constructing the summer excursion fares from Kansas City in the season of 1917. These arbitrary bases were also, by force of the competition of the Chicago gateway lines, applied by way of the St. Paul, Minn., gateway. The round-trip summer excursion fare for the season of 1917 between Kansas City and Chicago, was \$19. The double one-way fare, Omaha to Chicago, is \$24.10, made on the basis of the distance via Fulton, Ill., 483 miles, at 2.4 cents per mile, plus 90 cents, double bridge arbitraries between Fulton and Clinton, Iowa, and between Council Bluffs, Iowa, and Omaha. The double locals, Kansas City to Chicago, are, therefore, \$2.40 less than the double locals, Omaha to Chicago, but as the arbitrary basis of \$16.50, used in constructing summer excursion fares between Kansas City and Wisconsin points, for instance, was \$5.20 less than the double locals, Kansas City to Chicago, the summer excursion fare between Kansas City and Beaver Dam, Wis., for example, was \$7.60 less than the similar fare between Omaha and Beaver Dam. This difference of \$7.60 applied where the destinations were in northern Illinois, Wisconsin, and Michigan, as previously observed, except that the Kansas City fares applied as maxima between Omaha and certain destinations in Michigan to which Omaha is intermediate. For example, the fares between Omaha and Escanaba, Gladstone, Manistique, and Marquette were the same as those between Kansas City and those points, although they are, on an average, about 108 miles nearer Omaha than Kansas City. The fares between Omaha and Menominee, Mich., Duluth and Minneapolis, Minn., were considerably lower than the fares between Kansas City and St. Joseph and the same points. The fare between Omaha and Minneapolis was \$16.94, while those between Kansas City and Minneapolis ranged from \$19, via the Chicago Great Western Railway, to \$33.60, via Chicago and St. Louis.

The fares between Omaha and New York, N. Y., and Boston, Mass., were made, via northern junction points, such as Montreal, Canada, Albany, Troy, and Buffalo, N. Y., Springfield, Mass., and Portland, Me., on the double locals over Chicago; via the southern gateways, Savannah, Ga., Mobile, Ala., and Charleston, S. C., on the double locals over St. Louis. Via Norfolk, Va., the fares applied by using the double locals over Chicago and also over St. Louis. The fares via the so-called standard or stronger lines were higher than those via the so-called differential or weaker lines. Diverse routing was permitted. For instance, the fares between Omaha and Boston

applied via Montreal and the direct routes and, from Boston, via differential lines and New York. Between Kansas City and New York and Boston, when the fares were made on the Chicago gateway, the arbitrary of \$18 between Kansas City and Chicago was used; when made on the St. Louis gateway and double intrastate locals, Kansas City to St. Louis and return, the arbitrary basis of \$11.20 was applied. These same bases also applied between Omaha and Kansas City and Atlantic City, N. J. By way of the standard line the summer excursion round-trip fare between Kansas City and Atlantic City was \$55.10; between Omaha and Atlantic City, \$61.20. However, the short-limit ticket between Kansas City and Atlantic City was \$48.20, while that between Omaha and Atlantic City was \$57.30. This latter difference of \$9.10 was wholly due to the difference in the bases used to St. Louis, \$11.20 between Kansas City and St. Louis, and \$20.30 between Omaha and St. Louis.

Complainant particularly emphasizes the difference in fares between Kansas City and Omaha from and to Washington, D. C., and Baltimore, Md. The distances from Kansas City and Omaha to Washington are, respectively, 1,171 and 1,280 miles. The eastbound one-way fare from Omaha to Washington is \$30.05; westbound, \$28.65. These composed the round-trip fare in the season of 1917, but no specific summer excursion fare was published between Omaha and Washington. The one-way fare from Kansas City to Washington is \$28.75; the westbound fare, \$27. However, the summer excursion fare between Kansas City and Washington was not composed of these factors, but was made \$48.55 and was applied to Baltimore because, by way of the line of the Pennsylvania Railroad Company, it is intermediate to Washington. Defendants explained this fare as follows: Washington is not considered by the lines operating from Chicago and St. Louis a summer resort and they did not during the season of 1917 sell summer excursion fares to it. The southeastern passenger association from points in the south does so consider it and tendered a basing and selling fare from Memphis, Tenn., to Washington and return of \$30.70. Pleasant Hill, Mo., located on the lines of the Missouri Pacific and the Chicago, Rock Island & Pacific railways, is intermediate Memphis and Kansas City, 34 miles south of the latter point. The Missouri Pacific carries the Memphis basing and selling fare through Pleasant Hill and St. Louis to Washington. For example, it provided a summer excursion round-trip fare from Carthage, Mo., south of Pleasant Hill, to Washington and return of \$46.85, composed of double the bridge charge from Memphis to Bridge Junction, Ark., plus 80 per cent of the double locals from the latter point to Carthage added to the Memphis basing fare. The Kansas City lines, which do not reach Memphis, to meet the com-



petition of the Missouri Pacific, made the summer excursion fare between Kansas City and Washington, by adding to the Carthage summer excursion fare, double locals from Pleasant Hill to Kansas City. No similar basis, which would be used in constructing summer excursion fares from Omaha, was tendered from Chicago or St. Louis by eastern lines. By the use of this basis, which the defendants do not commend, the summer excursion fare between Omaha and Washington exceeded that between Kansas City and Washington by \$10.15 instead of by \$2.95, which would have obtained had the combination of straight fares been applied.

As the double locals Omaha to St. Joseph are \$6.74 and those from Omaha to Kansas City are \$9.60, it would have been cheaper for the Omaha passenger to go either to St. Joseph or Kansas City and there purchase a summer excursion ticket between either of them and Washington than to purchase it at Omaha.

During the season of 1917 the Chicago Great Western in some instances carried higher summer excursion fares than the other lines. For instance, the fares between Kansas City and Beaver Dam, Lake Geneva, and Waukesha, Wis., were \$1.85 higher in connection with that line than in connection with the others. It does not consider itself a Kansas City-Chicago line for passenger traffic, because it has a circuitous route and its service does not compare favorably with that of the other lines. The Chicago Great Western is the only defendant via the line of which St. Joseph is intermediate Kansas City and Chicago, and it declines to participate in any fares from Kansas City lower than those from St. Joseph or lower than those from Des Moines, Iowa, which latter city's passenger traffic is considered more important to it than that of Kansas City.

The specific instances of detriment to Omaha in the amount of the summer passenger fares of 1917 may be summarized as follows: Travelers from points in the state of Nebraska could go to eastern destinations at lower fares via Kansas City and St. Joseph than via Omaha, although Omaha was their natural market, and their stop-over at the gateway, in either or both directions, tended to increase the business of the place at which they stopped. However, from practically all points in Nebraska, except the extreme southeastern portion of the state, the same summer excursion fares were applicable in 1917 through either Kansas City or Omaha in connection with which stop-over privileges were allowed at either Kansas City or Omaha. Unless the summer excursion fares are made on the basis of fares which would arbitrarily be the same from a point in Nebraska to Kansas City and Omaha, obviously there must always be a disparity between Omaha and Kansas City except the point of origin is equidistant and unless the basis for making the fares locally

is the same. An interstate journey from a Nebraska point to Kansas City would be on the basis of 2.4 cents per mile; to Omaha, intrastate, 2 cents per mile.

Department managers and buyers of wholesale and retail establishments in Omaha, competitive with similar firms located at Kansas City and St. Joseph, and delegates traveling to points in the east to attend conventions in the interest of Omaha, made numerous trips between Omaha and Chicago, St. Louis and New York. The fares between Omaha and St. Louis are not attacked. No summer excursion fare applied between Omaha and Chicago. Although the fares between Omaha and points in Illinois are assailed, the Chicago fare is not in issue. The expense of traveling in the interest of the business firms was said to be an addition to the cost of operation and was a detriment to Omaha in that it was higher than that presumptively paid by department managers and buyers of Kansas City and St. Joseph firms.

And, generally, the fact of lower fares between Kansas City and the east than between Omaha and the east is alleged to have hurt the prestige of Omaha. The two cities are practically on a geographic equality in respect of their relation of trade centers and to competitive consuming territory. Their freight rates are, speaking broadly, the same. The higher fares between Omaha and the east were made the subject of newspaper criticism to the detriment of Omaha. Those fares were one less "talking point" in the endeavor to secure the location of new industries at Omaha.

The fares between Omaha and Chicago were prescribed by the Commission in *Western Passenger Fares*, *supra*, and there is nothing of record here to show that they are unreasonable.

By condemning the action of the Chicago & Alton in departing from what defendants show was the normal basis for constructing summer excursion fares, defendants practically admit discrimination. But they contend that that discrimination was not undue because the action of the Chicago & Alton, followed by the meeting of its arbitrary bases by the Atchison, Topeka & Santa Fe and other Kansas City lines, compelled the Omaha-Kansas initial carriers to do the like, and thus created circumstances and conditions from Kansas City which did not obtain from Omaha or from other Missouri River cities and intermediate points from which the normal basis of double one-way fares was used in the construction of summer excursion fares.

Carriers, the lines of which extend east but not west of Chicago and St. Louis, deny that they are responsible for any undue prejudice that may have resulted from the fare adjustment under attack. They show that their revenue is the same whether a passenger moves

from or through Kansas City, St. Joseph, or Omaha. that the lower fares from Kansas City and St. Joseph Omaha were established and maintained by carriers operating from Chicago and St. Louis. In this connection it is to be noted that the Chicago, Burlington & Quincy, the Chicago, Milwaukee & St. Paul, and the Chicago Great Western reach Omaha, Kansas City, and St. Louis. So far as these carriers are concerned there is no question that when they make their basis of passenger fares to points east of the Mississippi River, other points in the territories described by the commission, from Kansas City than from Omaha they do discriminate in favor of the latter point. The discrimination is admitted, but, as the contention is that it is not undue within the meaning of the act, because the Alton Railroad Company, which does not connect with Omaha, maintains lower fares to St. Louis and Chicago than the trip fares between those points, while the Omaha carriers shrink their fares to the same points. It is insisted by the carriers that should we confine our finding of undue discrimination to lines of carriers the rails of which serve Omaha, and not alike, we would leave the Alton and Santa Fe, which serve Omaha, unhampered of restraint to continue their discrimination which are the cause of complaint.

We do not concede that the statute under which we are proceeding to afford relief in such a situation. We have no authority in this case to order that the carriers which do serve Omaha from Kansas City cease and desist from continuing a rate which unduly prejudices Omaha.

In *St. Louis S. W. Ry Co. v. United States*, the Supreme Court said:

Localities require protection as much from combinations of carriers as from carriers whose "rails" reach them. It is the duty of Congress and of the Commission to prevent interstate discrimination against a particular locality is not enough to enter it.

It is asserted by the carriers east of the Mississippi that they are powerless to remove the discrimination against Omaha. They formed a link in the chain of discrimination, and by a refusal to participate in the discrimination they could put an end to the discrimination complained of.

Fares to St. Paul, Minn., from Omaha were made on a lower basis than from Kansas City and St. Joseph. It is claimed that affected fares east of Chicago operated on a lower basis with respect to fares north and northeast to Canada. Although the complaint is in

have been with respect to the fare from Omaha to Washington, D. C., as compared with the fare from Kansas City to Washington, there is no doubt the Washington situation was complained about and considerable evidence was submitted with respect thereto. As a tariff proposition there were technically no summer excursion fares from Omaha to Washington during the summer of 1917. The fact is, however, that an Omaha passenger to Washington was required to pay materially higher charges than the Kansas City passenger.

From a consideration of all the facts and circumstances we are of opinion, and find that the bases on which the summer excursion fares complained of were constructed were unjustly prejudicial to Omaha, to the extent that they exceeded the bases of fares contemporaneously maintained from Kansas City, Mo., to destinations named in the complaint.

Since December 28, 1917, the defendant railroad companies have been operated by the federal government. No such excursion fares as are here complained of were published during the year 1918. On argument it was asserted by the complainant that it would be satisfied with a finding by the Commission that the fare adjustment complained of was prejudicial to complainant within the meaning of the act. This we have done, and doubtless this will be sufficient to deter the carriers from a reestablishment of the unlawful adjustment in the future. In any event we have no ground for the issuance of an order against the carriers and the Director General for the reason that the adjustment complained of is not now in effect, and has not been in effect since December 28, 1917.

The complaint will be dismissed.

52 I. C. C.

No. 10230.  
PUBLIC SERVICE COMMISSION OF WASHINGTON ET AL  
*v.*  
AMERICAN RAILWAY EXPRESS COMPANY.

*Submitted January 23, 1919. Decided February 11, 1919.*

Increased carload commodity express rates on fresh fruits and vegetables from points in the states of Washington, Oregon, and Idaho and on fish from points in the states of Washington and Oregon to all other points on defendant's lines found justified. Complaint dismissed.

*Hance H. Cleland* for Public Service Commission of Washington; *John G. Graham* for Public Utilities Commission of Idaho; and *J. O. Bailey* for Public Service Commission of Oregon.

*Lester C. Neff* for San Francisco Chamber of Commerce, San Jose Chamber of Commerce, and Merchants & Manufacturers Traffic Association of Sacramento, Cal.; and *Edward M. Cousins* and *L. E. Latourette* for city of Portland, Oreg., interveners.

*Branch P. Kerfoot* for defendant.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

On July 25, 1918, following our decision in *Proposed Increase in Express Rates*, 50 I. C. C., 385, defendant herein increased by 10 per cent its carload commodity rates on fresh fruits and vegetables from points in the states of Washington, Oregon, and Idaho and on fresh fish from points in the first-named two states to all other points on its lines. These increased rates are alleged by the complainants and by the city of Portland, Oreg., intervener, to be unreasonable and unduly prejudicial. The San Francisco Chamber of Commerce intervened in opposition to any change in the existing relationship between the rates attacked and those from San Francisco.

Approximately 759 carloads of fresh fruits and vegetables, principally berries and cherries, and 1,052 carloads of fresh fish, weighing more than 36 million pounds, upon which the transportation charges exceeded \$960,000, were shipped over defendant's lines from points in Washington, Oregon, and Idaho to territory east of the Rocky Mountains between January 1, 1917, and July 1, 1918. Most of the fruits and vegetables were destined to points on or west of the Missouri River. Some cherries and the greater part of the fish

52 I. C. C.

moved to Chicago, Ill., New York, N. Y., and other eastern points. Generally speaking, equal rates apply from all points of origin involved and, while, as stated, the rates to all destinations are attacked, the evidence relates principally to those to the Missouri River, Chicago, and New York rate groups, which comprise substantially all territory east of the Montana-North Dakota state line. Rates are stated in amounts per 100 pounds and, unless otherwise specified, apply on carload shipments.

Prior to January 1, 1919, the rates on fresh fruits and vegetables from Yakima, Wash., a representative point, were \$2.20 to St. Paul, Minn., and \$2.75 to Chicago, yielding 2.52 cents and 2.55 cents, respectively, per ton-mile and being 27 per cent and 30 per cent, respectively, of the first-class express rates; on fresh fish from Seattle, Wash., \$2.75 to St. Paul, \$3.02 to Chicago, and \$3.30 to New York, yielding 3.08 cents, 2.74 cents, and 2.12 cents, respectively, per ton-mile, and being 32 per cent, 32 per cent, and 30 per cent, respectively, of the first-class rates. Except for the 10 per cent increase, effective July 25, 1918, the rates on these commodities had not changed for 15 years or more. The second-class rates, which apply on food products, any quantity, in the absence of specific commodity rates, are approximately 75 per cent of the first-class rates.

The rates on fresh fish are based on the net weight, no charge being made for the transportation of containers or ice. Such shipments move throughout the year, principally from Seattle and Tacoma, Wash., and there is no evidence of competition with other points. The witness for complainants testified that the increase in the carload rates on fresh fish was of no material consequence to shippers.

The evidence for complainants shows that in certain markets berries from Washington, Oregon, and Idaho are sold in competition with those from Missouri, Arkansas, Iowa, Minnesota, and Wisconsin, but apparently only during brief periods, for the main producing seasons in these different states are not contemporaneous and overlap but slightly, if at all. It appears, also, that these competing shipments move by freight or, in less than carloads, by express. The percentage relation to first class of the carload rates from competing points named by complainants is higher than that of the rates attacked and, distance considered, the rates are on a higher level. All rates from competing points were also increased by 10 per cent following our decision in *Proposed Increase in Express Rates, supra*, and if the principal competition is with less-than-carload shipments it is obvious that where the length of haul is substantial both the rates paid and the amount of the increase borne by their competitors exceed those borne by the Pacific coast carload shippers.

Complainants offered evidence showing that the cost of producing and marketing fruits and vegetables has largely increased, but so have the prices received and the net returns to the producers, although perhaps not in equal measure. Their assertion that the increased rates seriously disadvantage Pacific coast shippers in eastern markets is not clearly and definitely sustained by the evidence. Even if it were, we can not reduce rates which appear to be just and reasonable for the service performed in order to equalize natural disadvantages of competing producers or localities or to enable shippers to market their products at a profit.

Complainants also contend that the defendant does not need the additional revenues yielded by the increased rates, and submitted evidence as to the net operating income and the rate of return upon the property investment of the Great Northern, the Northern, and the Western express companies, which prior to their merger with the American Railway Express Company transported or participated in the transportation of the greater part of the traffic in question. For the reasons stated in *In re Express Rates, Practices, Accounts, and Revenues*, 24 I. C. C., 380, 418, a reasonable rate may not be based upon consideration only of the value of the property owned and used by an express company. In *Proposed Increase in Express Rates, supra*, we considered the fact that the financial condition of these three carriers was more favorable than that of the larger express companies and also the contention that the percentage of increase should be less on carload and on long-haul shipments than on traffic of other descriptions, but nevertheless we perceived no sufficient grounds for denying the proposed increased rates.

Upon all the facts of record we conclude and find that defendant has justified the increased rates.

The Director General of Railroads, in the exercise of powers conferred upon the President by the federal control act, initiated rates which became effective January 1, 1919, and exceed those complained of. These increased rates are not in issue and the Director General has not been made a party defendant.

An order dismissing the complaint will be entered.

AITCHISON, *Commissioner*, concurring:

The objections to the increases in carload commodity rates, which I expressed in my dissent in *Proposed Increase in Express Rates, supra*, have to a considerable extent been met by the increases effected following recommendations made by us in *Increase in Express Rates*, 51 I. C. C., 263, 267. Accepting the action of the majority in the earlier case cited as the rule of the Commission, I concur in the result herein.

No. 9878.  
IDA S. GRAUSTEIN  
v.  
BOSTON & MAINE RAILROAD ET AL.

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*Submitted October 12, 1918. Decided February 13, 1919.*

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Upon complaint that the rates charged for and the service and facilities given to the transportation of milk in leased cars from Vergennes and Brandon, Vt., to Boston, Mass., were unjust, unreasonable, and unduly prejudicial during the period from March 8, 1916, to October 1, 1916, *Held*:

1. That the rates charged on the cars in question were unduly prejudicial. Reparation awarded.
2. That the allegations of the complaint in respect to train service, cars, receiving and loading stations, and caretakers are not sustained by the record.

*W. A. Graustein* for complainant.

*W. A. Cole* for Boston & Maine Railroad and its temporary receiver, and *E. W. Lawrence* for Rutland Railroad Company.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCORD, MEYER, AND WOOLLEY.

*MCCORD, Commissioner:*

A proposed report in this case was prepared by the examiner and served on the parties. The complainant filed exceptions. On application of the complainant the Commission permitted the filing of a supplemental complaint making the Director General of Railroads a party defendant. The Director General has answered, and the case was argued before us on October 12, 1918, and is submitted for final decision. The case involves only the question of reparation with respect to shipments of milk, in carloads, from points in Vermont to Boston, Mass., during the period from March 8, 1916, to October 1, 1916. There is nothing with respect to the national control of the defendants and their unified operation that is involved in this proceeding. The rates have been twice increased, but their reasonableness at this time is not in issue.

In *Graustein v. B. & M. R. R.*, 45 I. C. C., 393, we found that the Rutland and Boston & Maine railroads had violated the act to regulate commerce in respect to the rates charged for and the service and

52 I. C. C.



facilities given to the transportation of milk in leased cars from certain points in Vermont on the first-named line to Boston, Mass., and awarded complainant damages therefor in the sum of \$30,518.62. That case covered the period from October 1, 1914, to March 8, 1916. In the present case practically the same violations of the act are alleged by the same complainant in respect to cars which moved between March 8, 1916, and October 1, 1916, the leased-car system of transporting milk having been discontinued on the latter date as a result of our decision in the *New England Milk Case*, 40 I. C. C., 699. Specifically, the present complaint alleges (a) that the rates charged on the cars in question were unjust, unreasonable, unjustly discriminatory, and unduly prejudicial to complainant, and unduly preferential to her competitors; (b) that the train service given to complainant's cars was improper, unreasonable, unjustly discriminatory, and unduly prejudicial to complainant, and unduly preferential to her competitors; (c) that the cars furnished complainant were not proper cars for transporting milk and that complainant was unduly prejudiced and her competitors unduly preferred thereby; (d) that complainant was denied and her competitors furnished receiving and loading stations with the result that complainant was unduly prejudiced and her competitors unduly preferred; and (e) that complainant was further unduly prejudiced and her competitors further unduly preferred in the matter of caretakers. For all these alleged violations of the act damages in the sum of \$65,000 are prayed. The answers of the defendants are general denials. In an amendment to its answer filed at the hearing, the Rutland further avers that full damages were awarded in the first case for each and all of the matters complained of against that defendant in this case.

During the period covered by this case, as during that covered by the first, complainant had contracts with certain farmers living along the main line of the Rutland, in Vermont, at and south of Vergennes, under which she agreed to purchase milk from them. She also had contractual arrangements with defendants under which they were to furnish suitable cars for transporting the milk to Boston. The cars were operated under what was known as the New England or leased-car system, fully described in *Albree v. B. & M. R. R.*, 22 I. C. C., 803. On the southbound trips the cars were to pick up milk at stations designated by complainant; on the northbound, or return, trips they were to stop to unload the empty cans at the same stations. During this period complainant had several competitors who were engaged in purchasing milk in the same and other territories and shipping it to the Boston and New York markets. The difference in the rates, service, and facilities accorded complainant and these competitors is the principal basis of the complaint.

Although the report and briefs and extensive excerpts from the record in the first case were filed as exhibits in this case, this case covers a different period from that covered by the first case, and must be treated as a separate and independent proceeding. While this is true, and the hearing proceeded upon that principle, one important question necessarily involved is whether there had been any changes in circumstances and conditions surrounding the transportation from that considered in the other case. No attempt will be made here to reconsider any of the findings made in the first case. No petition for hearing or reconsideration of that case has been filed by either the complainant or the defendants. So far as complainant is concerned, the damages awarded by our report therein represent full reparation for all the unlawful acts of defendants up to and including March 7, 1916, brought in issue by the complaint; so far as defendants are concerned, the findings of fact and our conclusions from the facts on the record there presented have been accepted.

#### RATES.

Throughout the period covered by the first case complainant's car was operated as a pick-up car from Vergennes to Boston. The rate charged was \$63.96 per car per trip. While the complaint therein attacked that rate as unreasonable per se, the evidence introduced at the hearing related almost entirely to the allegation of undue prejudice arising out of its relation and adjustment with the rates from points in Vermont on the Boston & Maine and points in Maine on the Maine Central. The rate from points in Vermont on the Boston & Maine, substantially the same distance from Boston as is Vergennes, was \$37 per car per trip in freight service and \$49.32 per car per trip in passenger service; that from substantially equidistant points in Maine on the Maine Central was \$37 per car per trip in freight service. The circumstances and conditions surrounding the transportation from Vergennes and other points on the Rutland were not as favorable as those surrounding the transportation from points on the Boston & Maine and Maine Central. These differences in conditions were estimated at 50 per cent, which, added to the rate of \$37, produced a hypothetical rate of \$55.50 per car. We accordingly held that the rate of \$63.96 per car charged complainant from Vergennes to Boston was unduly prejudicial to the extent of \$8.46 per car.

From March 8, 1916, to July 31, 1916, complainant's car continued to be operated as a pick-up car from Vergennes to Boston; from August 1, 1916, to October 1, 1916, it was operated as a through car from Brandon to Boston. Complainant was charged the rate of \$63.96 per car per trip from both Brandon and Vergennes, although

the distance from Brandon to Boston is 183 miles, as against 213 miles from Vergennes. In all other respects the present record as regards the rates and their relative adjustment is practically the same as that in the first case. That is to say, the rates from points on the Rutland on the one hand and from points on the Boston & Maine and Maine Central on the other remain unchanged; and the evidence of the parties in respect to the allegation that the adjustment was unduly prejudicial to complainant consisted largely of excerpts from the testimony and copies of the exhibits introduced in the first case.

In September and October, 1915, the Rutland, Boston & Maine, and Maine Central published tariffs, to become effective November 1, 1915, readjusting the rates on leased cars from points on their respective lines to Boston. These tariffs were suspended pending the investigation in the *New England Milk Case*, and later, pursuant to our order therein, were canceled. Defendants point out that if these tariffs had been permitted to become effective, the present complainant would have had no cause of action in respect to the adjustment of rates, and that therefore no finding of undue prejudice should be made against them in this case. Regarding this contention, it is sufficient to say that our suspension of the tariff referred to did not abrogate the requirements of the law applicable to the rates actually in effect during the period here involved. See *Mebius & Drescher Co. v. Central California Traction Co.*, 42 I. C. C., 599.

#### TRAIN SERVICE.

During the period covered by the first case, complainant's car stopped to pick up milk at several stations on the Rutland between the towns of Burlington and Rutland, and also at a few stations between Rutland and Bellows Falls. For a considerable part of that period it was attached, except on Mondays and Tuesdays, to an extra freight train which had no definite schedule but which left Burlington "about" 10 a. m. On Mondays and Tuesdays it was at first attached to a freight train scheduled to leave Burlington at 7.30 a. m.; later to a passenger train which left there at 12.40 p. m. The service was irregular and generally unsatisfactory for milk traffic. Competitors of complainant, operating on the same and other divisions of the Rutland, were given service on morning passenger trains. We found that the train service furnished by the Rutland was unduly prejudicial to complainant and unduly preferential to her competitors.

By the beginning of the period covered by this case, the quantity of milk purchased by complainant and the number of stations at which it was picked up had decreased to such an extent that her collections were almost entirely confined to Vergennes, Brandon, and

52 I. C. C.

Florence, stations between Burlington and Rutland. Her car was operated only on alternate days. On all days but alternate Mondays it was handled by a regularly scheduled milk and freight train that picked up all the milk shipped on those days from that section of the road to both Boston and New York. This train, No. 32, left Vergennes daily except Monday at 11.30 a. m. and its Boston & Maine connection was due in Boston at 7 a. m. the next day. Complainant objected to this train mainly because, as was stated, it was scheduled too late in the day from her pick-up stations. She accordingly made several requests for service on other trains. These requests were declined in violation, so complainant contends, of defendants' duty under section 1.

*Train No. 54.*—The first and principal request was for service on train No. 54. This was a morning passenger train and, according to complainant, was the only suitable train on this division of the Rutland for picking up milk under the leased-car system. It ran to Rutland where it was split into two divisions; one division going to Bellows Falls, Vt., where it was scheduled to connect with a Boston & Maine train for Boston, and the other going to Troy, N. Y., where it was scheduled to connect with a New York Central train for New York. According to the Rutland, milk service on this train would have jeopardized these connections.

In the first case, it appeared that the predecessor of complainant's business, a concern managed by complainant's husband, had been given service on this train for many years prior to July, 1914, and, on the record there presented, we found "there is no showing that the train made better connections after the milk car was no longer attached to it than before." The present record indicates that, changed conditions considered, the train maintained its schedule better after the milk car was taken off. It also appears that a number of competitors of complainant requested that their cars be attached to this train, and that their requests were refused. During the specific period covered by this case, the Rutland was frequently compelled to increase the number of passenger cars in this train from Burlington in order to take care of increased travel incident to the opening of the military training camp at Plattsburgh, N. Y., which is across Lake Champlain from Burlington.

Complainant asked the Rutland to allow her car to be attached to a number of trains other than train No. 54, which requests were refused. It is not necessary to consider these requests in detail, because if any of them had been granted it would not have removed the alleged discrimination. In other words, train No. 54 was the only one that would have been satisfactory to complainant.

How complainant's request for transportation was actually complied with will now be discussed. This involves a consideration pri-

marily of the pick-up service rendered by train No. 32, as this train picked up complainant's car throughout the period covered by this case except on alternate Mondays. Complainant's chief objections to service on this train were: (a) That the middle of the day was not a convenient time for the farmers to deliver milk at the stations; (b) that service on a different train on Mondays interfered with milking schedules; (c) that the service was irregular; and (d) that the time in transit was too long.

(a) The record shows that generally farmers prefer to deliver their milk at the stations in the morning of the day. Complainant's car with the empty cans was handled northbound in train No. 87, which was scheduled to arrive in Vergennes at 8.30 a. m. Throughout most of the period during which the car was operated from Vergennes the Rutland furnished complainant with a box car in which to receive and keep the milk delivered at that station. Some of the farmers around Vergennes from whom complainant purchased milk lived 5 miles from the station, and two of them testified that train No. 32 was more convenient for them than train No. 54 would have been. After complainant's milk station at Brandon was opened, on April 26, 1916, the farmers around Brandon and Florence were also privileged to deliver their milk to complainant in the morning. Moreover, witnesses for defendants gave the particulars of several cars of complainant's competitors that picked up milk in the late morning and early afternoon of the day.

(b) Farmers object to delivering their milk to an afternoon train on one day of the week and to a midday or morning train on other days of the week, as such service generally interferes with milking and farming schedules. Complainant's car was operated only on alternate days, so it was only on every other Monday that the farmers could have been inconvenienced in that respect. Witnesses for defendants testified to a large number of cars operated by competitors of complainant which were attached to a different train on one day of the week.

(c) From March 8 to May 2, inclusive, complainant's car was operated strictly as a pick-up car, and the principal stops were Vergennes, Brandon, and Florence. On April 26 she opened her milk station at Brandon, and from May 4 to July 31, inclusive, she loaded milk regularly at Vergennes and loaded and unloaded milk at Brandon, the stop at Florence having been discontinued. After July 31 complainant's car was operated from Brandon only.

As the car started from Vergennes during the first and second periods, the performance of the train from that point was not material. For the same reason its record from Brandon during the third period was not important. This was because the car with the empty cans arrived at Vergennes at 8.30 a. m., and at Brandon at 7.18 a. m.

Four farmers, two living near Vergennes, one near Florence, and the fourth near Brandon, testified that they had never had any fault to find with the train service, and, further, that they had not heard any other farmers complain of the train service. A former caretaker employed by complainant testified to the same effect.

(d) Allowing two hours for switching in Boston, complainant's car was on the road  $16\frac{1}{2}$  hours on the Monday runs and  $21\frac{1}{2}$  hours on the other runs during the period it was operated from Vergennes, and about 17 hours and 18 hours, respectively, during the period it was operated from Brandon. Several cars of complainant's competitors which started on the same and other divisions of the Rutland and at points on other lines approximately the same distance from Boston were on the road as long and longer than complainant's car. In the *New England Milk Case* we found that the average running time of the trains transporting the cans of one of the largest dealers in Boston was about 15 hours.

The same train that handled complainant's car handled all the milk cars which started from points between Burlington and Rutland to both New York and Boston. In her brief, however, complainant points out that a competitor operated a car from Bristol to New Haven Junction which arrived at the latter point at 9.12 a. m., whereas her car did not pass New Haven Junction until 11.45 a. m. The Bristol Railroad from Bristol to New Haven Junction is an independent line which does not issue or accept any through waybills, tickets, or checks.

During March complainant picked up a few cans of milk at East Wallingford, a station 13 miles south of Rutland. Along this line, the same competitor that operated the car from Bristol operated another car daily from Rutland to Boston. This car was handled in train No. 162 which left Rutland at 6 a. m., whereas, complainant's car was handled from Rutland in train No. 156, which left there at 6.25 p. m. If complainant's request for service on train No. 54 had been granted, her car would have left Rutland at 10.50 a. m., and would have arrived in East Wallingford at 11.24 a. m., and in Bellows Falls at 1 p. m. In other words, she would have received the same sort of pick-up service south of Rutland as she actually received north of Rutland. A single car can not pick up milk on two different divisions of a railroad at the same time, consequently it was impossible for the Rutland to have given complainant, operating one car on alternate days, the same service which it furnished a competitor who operated one car on each of the two divisions referred to.

Many of the farmers from whom complainant purchased milk were located in the angle of territory formed by the Burlington-  
52 I. C. C.

Rutland main line and the Ticonderoga-Leicester Junction branch line. A competitor operated a car from Ticonderoga and Leicester Junction to Boston. This car was handled in train No. 454 which was scheduled to leave Ticonderoga at 8 a. m. and to arrive in Leicester Junction at 9.35 a. m. At Leicester Junction it was held until train No. 32, the same train that handled complainant's car, came along at 2.15 p. m. Complainant insists that it was unduly preferential to give this competitor service on the morning train referred to, while she was compelled to accept service on a midday train. Train No. 454 was a mixed train and the only train operated from Ticonderoga to Leicester Junction which could make connections with train No. 32.

The angle of territory formed by the Rutland-Bellows Falls and Rutland-North Bennington main lines is accessible from points near Rutland on both lines. A competitor of complainant's operated a car from North Bennington to Rutland and thence to Boston. According to complainant this competitor was given service on train No. 57, a passenger and mail train scheduled to leave North Bennington at 8.48 a. m., and to arrive in Rutland at 10.30 a. m.; complainant's car left Rutland at 6.25 p. m. The comparative service, it is contended, was unduly prejudicial to complainant. She insists that this competitor should have been compelled to take service on train No. 49, which left North Bennington at 11.25 a. m. and arrived in Rutland at 1.35 p. m. The record shows that train No. 57 had no connections to make during the period of this case; that it ran only to Burlington, except during the summer months when it ran to Alburgh, N. Y.; and that between June 27, 1916, and September 24, 1916, the competitor's car referred to was not attached to it, but to train No. 49. At Rutland this competitor's North Bennington car was held until 8.20 p. m. on Sundays and 6.25 p. m. on week days when it, as well as the Bristol and Ticonderoga cars above referred to, went forward on the same trains that handled complainant's car to Bellows Falls and Boston.

On May 27, 1916, and June 26, 1916, defendants failed to return complainant's car with the empty cans, in plain neglect, so complainant contends, of their duty under section 1. The division yard-master of the freight yard to which complainant's car was switched for unloading testified that on the dates referred to the cars contained cans of milk and cream which had not been unloaded. This was denied by complainant but, as the record shows that defendants substituted other cars on the scheduled days and that the farmers from whom complainant purchased had double sets of cans, complainant suffered no damage on this score.

52 I. C. C.

## CARS.

During the period covered by the first case complainant repeatedly complained of the Boston & Maine cars assigned to her service, and especially of Boston & Maine car No. 1647 which she was compelled to use from December 19, 1914, to November 7, 1915. She followed up these complaints with several requests that the Boston & Maine cars complained of be taken out of her service and that other and more suitable cars be assigned to her. She made no complaints against the Rutland cars furnished, and her briefs in the first case contain no suggestion that those cars were unsatisfactory. Our finding that complainant, after a reasonable request therefor, had been denied proper cars in violation of section 1 of the act referred only to the Boston & Maine.

During the period covered by the present case, Boston & Maine car No. 1647 was not in complainant's service. The cars in her service during this period were Rutland cars 141, 332, 335, and 5326; and Boston & Maine cars 1645, 1660, 12770, and 12789. So far as the record shows no complaint was made against any of these cars at the time they were furnished.

*Rutland cars 332 and 335.*—These cars were used on 51 of the 108 trips made during this period. They were modern, insulated milk cars, and complainant so admits in her brief.

*Rutland car 5326.*—This car was used on one trip only. Complainant was unable to get "its history," and consequently makes no complaint against it.

*Rutland car 141.*—This car was used on 17 trips. It was the same type of car as Rutland car No. 140, which was extensively used during the period covered by the first case. As stated, none of the Rutland cars furnished were there complained of. Car No. 141 was built expressly for the Boston Dairy Company, a concern then managed by complainant's husband. The record indicates that it was assigned indiscriminately to the different shippers in this territory, and one of complainant's competitors testified that it had been in and out of his service and that, on account of its having two doors on each side, his caretakers preferred it on pick-up runs. Complainant's assertion that it was not an insulated car is not sustained by the record.

*Boston & Maine cars 1645 and 1660.*—These cars were alike. They were used on three trips only, and in the early spring of the year. They were built for transporting milk, but were not insulated. Of the 87 milk cars operated by the Boston & Maine, 50 were of this type. The record indicates that the type of car required to preserve milk in transit in midsummer is not required in the early spring.



*Boston & Maine cars 12770 and 12789.*—These cars were alike and were used on a total of 31 runs between May 30 and September 30. They were freight refrigerator cars which had been equipped for passenger service and assigned to the milk business. They were insulated. These cars, according to the testimony of a witness for the Boston & Maine, were assigned to complainant's service at her request. This statement was not disputed by complainant. The former milk agent of the Boston & Maine admitted that these cars, on account of having doors which opened out too low to swing above the average loading platform and of being so constructed that no caretaker could ride inside of them, were not satisfactory cars for pick-up runs. But complainant had discontinued her pick-up stops when these cars were assigned to her. The record indicates that they were satisfactory cars for through runs.

The record contains no evidence that complainant was discriminated against in the assignment of cars for her service. It does not appear that the cars furnished her competitors were any better or more suitable for the transportation of milk than those furnished complainant.

#### RECEIVING AND LOADING STATIONS.

Prior to the period covered by the first case the Rutland entered into a contract with one Steven C. Millett under which the latter, among other things, was to construct and maintain creameries along the line of the Rutland between Ogdensburg, N. Y., and Chatham, N. Y., and in other ways to develop the milk traffic to New York. In pursuance of this contract Millett constructed several buildings suitable for creameries or milk stations along the line referred to. Complainant requested the Rutland to give her access to these buildings or to erect similar buildings for her use. The Rutland declined the request. We found that the situation resulting from the foregoing circumstances had operated unduly to prefer shippers of milk to New York and unduly to prejudice complainant. During the period covered by the present case complainant renewed the above-mentioned request and the Rutland again declined.

Only one of the stations built by Millett was still owned by him during the period of this case. That station was at Salisbury, Vt., and was leased to a New York dealer at \$240 per annum. It does not appear that this was an inadequate rental. It covered the building only, the dealer furnishing the necessary machinery for cooling and processing the milk.

During the period involved in the first case, complainant's car stopped to pick up milk at Salisbury, but during the period here

52 I. C. C.

under consideration it did not stop at that point on a single trip. The nearest points to Salisbury at which complainant's car stopped were Vergennes, 20 miles north of Salisbury, and Brandon, 10 miles south of Salisbury. One of complainant's competitors operating cars to Boston had a milk station at Leicester Junction, a point intermediate between Salisbury and Brandon. Under the circumstances it is not conceivable that the farmers from whom complainant purchased were or could have been induced to deliver any milk to Millett's station at Salisbury. Furthermore, it should be remembered that complainant had a box-car station at Vergennes and a pasteurizing plant at Brandon to which the farmers could deliver their milk at any time of day.

#### CARETAKERS.

In substance, the allegation of the complaint regarding caretakers is that the Maine Central, in connection with the Boston & Maine, furnished caretakers to care for and help load the milk at shipping points in Maine, whereas the Rutland, in connection with the Boston & Maine, did not furnish such caretakers at complainant's shipping points in Vermont, with the result that complainant was "discriminated against." In the first case we held that complainant had failed to sustain a similar allegation in respect to caretakers. In this case it was admitted by complainant that the conditions regarding caretakers were the same during both periods. An exhibit, filed by complainant after the hearing, contains an excerpt from the testimony of the general superintendent of the Maine Central in the *New England Milk Case* to the effect that "in some cases the employees of the railroad assisted in loading the milk on leased cars." It does not appear whether such assistance was given during the period covered by this case. It does appear that no such assistance was given by employees of the Rutland to any of complainant's competitors in Vermont.

Under all the facts and circumstances of this record we are of opinion and find that the complainant has failed to show that she was unjustly prejudiced by reason of train service and cars furnished by the defendants; by reason of refusal of the Rutland to furnish milk stations; and in the matter of caretakers. We further find that the relation of rates to Boston on milk in carloads maintained by the Maine Central in connection with the Boston & Maine from points in Maine, and by the Boston & Maine from points in Vermont, and by the Rutland and Boston & Maine from Vergennes and other points on the Rutland from March 8, 1916, to October 1, 1916, was unduly preferential to complainant's competitors to the extent of \$8.46 per

car. We also find that between the dates named the complainant shipped 103 carloads of milk; that she bore and paid charges thereon that were unjustly prejudicial to the extent of \$8.46 per car; that she was damaged in that amount per car, or the sum of \$871.38; and for reasons given in *Graustein v. B. & M. R. R.*, *supra*, that she is entitled to an order of reparation against the Boston & Maine Railroad and the Director General of Railroads in that sum, with interest at 6 per cent per annum from July 1, 1916.

An order will be entered accordingly.

52 I. C. C.

No. 9850.

## UNION TRACTION COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,  
ET AL.

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*Submitted September 30, 1918. Decided February 12, 1919.*

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1. Joint rates not in excess of those contemporaneously maintained by defendant carriers from Oklahoma group points prescribed on gasoline from points on complainant's line south of Coffeyville, Kans., to St. Louis, Mo., and points taking the same rates over complainant's line to Coffeyville, and the Atchison, Topeka & Santa Fe Railway and the Missouri, Kansas & Texas Railway beyond.
2. The record does not justify the establishment of through routes and joint rates on classes and commodities other than gasoline.

*E. H. Hogueland* for complainant.*Fred G. Wright* for Missouri Pacific Railroad Company.*J. P. Wahle* for Atchison, Topeka & Santa Fe Railway Company.*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS MEYER, DANIELS, AND WOOLLEY.

## BY DIVISION 2:

In its complaint filed August 28, 1917, as amended, the complainant alleges that the refusal of the defendant carriers to join with it in the establishment of through routes and joint class and commodity rates between points on its line and Kansas City and St. Louis, Mo., and points taking the same rates, is violative of sections 1, 2, 3, and 15 of the act to regulate commerce. The establishment of just and reasonable through routes and joint class and commodity rates between these points is asked. Three days prior to the hearing complainant filed a motion to dismiss the complaint as to the Missouri Pacific Railroad. On the date of the hearing a letter was received from the Missouri Pacific, protesting against such dismissal, and the burden of the defense was borne by that carrier's representatives, although it was stated for the complainant that relief was sought only against the Atchison, Topeka & Santa Fe Railway, hereinafter termed the Santa Fe; Missouri, Kansas & Texas Railway, hereinafter called the M., K. & T., and the St. Louis-San Francisco Railroad.

52 I. C. C.

way, hereinafter termed the Frisco. Rates are stated in cents per 100 pounds unless otherwise specified.

The complainant is an interstate common carrier subject to the act. Its line, comprising about 73 miles of standard-gauge main line equipped for electrical operation, extends from Parsons, Kans., through Cherryvale, Independence, and Grabham to Coffeyville, Kans., thence southward through Howden, Lenepah, and Delaware to Nowata, Okla. All the stations south of Coffeyville are in Oklahoma. Complainant's line parallels the Frisco from Parsons to Cherryvale, a distance of 21 miles; the Santa Fe from Cherryvale to Independence, a distance of 10 miles; and the Missouri Pacific from Independence through Coffeyville to Nowata, a distance of 42 miles. It has track connections with the Santa Fe at Independence and Coffeyville; with the Frisco at Cherryvale; with the M., K. & T. at Coffeyville; and with the Missouri Pacific at Blake, Kans., a few miles south of Independence. Complainant owns a steam locomotive which transports most of the freight between Nowata and Coffeyville; three electric express cars which move package freight and perform switching; three electric locomotives with baggage car bodies; eight box cars; five flat cars; and three coal cars. Any ordinary freight equipment can be hauled over complainant's line. Although difficulties are encountered in moving cars with outside-hung brakes through Coffeyville and Independence because of sharp curves, such equipment can be handled over the line south of Coffeyville to the points of interchange with complainant's connections at Coffeyville. Since the summer of 1916, the defendant carriers have maintained rates with complainant on intrastate traffic in Kansas by order of the public utilities commission of that state.

Complainant's evidence was almost wholly confined to rates on gasoline from Oklahoma producing points which is said to constitute its principal freight traffic. These rates will be discussed separately.

In *Midcontinent Oil Rates*, 36 I. C. C., 109, we held, among other things, that rates of 10 and 15 cents to Kansas City and points taking the same rates from Kansas producing points, including Coffeyville, and Oklahoma producing points, respectively, and 20 cents from producing points in both states to St. Louis and points taking the same rates, would be just and reasonable to apply as maxima on refined oil, including gasoline, and these rates were established. The Oklahoma field embraces the producing territory served by complainant's line. Effective July 1, 1915, complainant published rates to Coffeyville of \$12.50 per car from Delaware and points north and \$17.50 per car from Nowata. These rates were later changed to 1.9 and 2.5 cents per 100 pounds, respectively. By routing shipments over complainant's line shippers south of Coffeyville secured com-

bination rates to Kansas City lower than the through rate in effect over the Missouri Pacific, while to St. Louis the combination rates in connection with complainant's line exceeded the through rate over the Missouri Pacific by the amounts of the local rates to Coffeyville. In an effort to equalize the through rate to Kansas City over complainant's line and connections at Coffeyville with those over the Missouri Pacific from the same and other points in the Oklahoma group the defendant carriers other than the Missouri Pacific published, to become effective in September and October, 1916, proportional rates from Coffeyville applying only on oil originating at Delaware. These rates, which were higher than the corresponding local rates from Coffeyville to Kansas City, were suspended in *Gasoline from Coffeyville, Kans.*, 43 I. C. C., 98, and ordered cancelled. This traffic moves on through bills of lading and through routes are therefore now in operation.

On November 30, 1918, the rates on gasoline in tank cars to Coffeyville from Delaware and points north, and Nowata, were increased to 2.4 and 3 cents, respectively. The present rates from the Midcontinent field to the Kansas City and St. Louis groups, established by the Director General of Railroads, who was made a party defendant and who filed an answer waiving further hearing, follow:

From—	To Kansas City group.	To St. Louis group.
	<i>Cents.</i>	<i>Cents.</i>
Kansas fields.....	14.5	24.5
Oklahoma fields.....	19.5	24.5

All but three of the eight refineries located on complainant's line south of Coffeyville have their loading racks exclusively on complainant's rails. The principal product of these refineries is casing-head gasoline, which is of a high grade and very volatile and requires expeditious handling due to evaporation in transit. Complainant's manager testified that it receives from these refineries about 300 cars of this commodity each month.

It was testified that the service afforded these refineries by the Missouri Pacific consists of one freight train each way daily, the train southbound doing the switching and the one northbound taking out the loads. The northbound train, shippers state, is sometimes unable to take out cars on the day loaded and they are held over until the following day. Complainant operates three freight trains daily from Coffeyville to Nowata and return. These trains also perform switching services. Additional switching and road hauling is performed upon request. The manner in which the lines beyond Coffey-

ville have provided for expedition in the handling of this traffic is related in *Gasoline from Coffeyville, Kans., supra*. Shippers state that expedition in the movement of their product is necessary, not only because of the nature of the commodity, but also on account of the scarcity of tank cars in which it moves, which must be returned promptly if their plants are to be operated efficiently. Some of the tank-car equipment is leased by the day with provision for penalties of from \$5 to \$10 a day for failure to return cars promptly. Consequently shippers are interested not only in prompt service to Coffeyville but also beyond. This, they say, they are best able to secure from complainant's line in connection with the M., K. & T., and Santa Fe through Coffeyville. It was stated for the complainant that if joint rates are required, it proposes to continue to handle this traffic through Coffeyville, although in so doing it will short haul itself; also that there is a necessity for through routes and joint rates with the Frisco by way of Cherryvale, the only junction between the two lines, although it was testified that there has been no movement of this traffic over that route. The testimony of all the shippers represented is that, due to its superiority, there is a great demand for the service of the complainant's line in the handling of their product. This, it is urged, is evidenced by the fact that complainant's line is used in making shipments to St. Louis even where lower rates are available by way of the Missouri Pacific as initial carrier.

The Sand Springs Railway, an electric line extending about 8 miles west from Tulsa, Okla., parallels the M., K. & T. The Oklahoma group rate applies over this road in connection with the defendant lines from Sand Springs, Okla., at which point are located three refineries, competitors of those on complainant's line. It is contended for the complainant that the maintenance by the defendants of joint rates with the Sand Springs Railway and the refusal thereof in connection with its line subjects complainant and shippers on its line to undue prejudice.

It was contended for the Missouri Pacific and the Santa Fe that all points on complainant's line are now adequately served; and stated that the establishment of joint rates with complainant will lead to unnecessary sacrifices of revenue. For example, if the group rate is extended to points on complainant's line the carriers beyond Coffeyville now receiving 24.5 cents on traffic to St. Louis will be compelled to absorb out of that rate divisions accruing to the complainant up to Coffeyville. The complainant replies that the defendant carriers will be compensated for this loss of revenue by being relieved of terminal services. It was testified for the Missouri Pacific that it has always opposed the extension in this territory of group rates to small lines which do not reach base points, such as

52 I. C. C.

Kansas City and St. Louis, and now opposes any further extension, especially to points on complainant's line, which does not open up new territory as did the other small lines with which joint rates were established.

Complainant's line south of Coffeyville opens up new territory to all of its connections except the Missouri Pacific. Through routes in connection with the Santa Fe and M., K. & T. now exist through Coffeyville, and in our opinion, the record establishes the propriety of, and the necessity for, their continued operation. There is no evidence that an additional route via Cherryvale and the Frisco would be used, if established. The record contains substantially no evidence with respect to the measure of the joint rates that should be applied on gasoline from points south of Coffeyville to Kansas City and St. Louis, and points taking the same rates by way of complainant's line to Coffeyville and the Santa Fe or M., K. & T. beyond, except a reference to the rates prescribed in *Midcontinent Oil Rates*. In *Gasoline from Coffeyville, Kans.*, we said with reference to those rates:

They were adjudged reasonable for application via steam railroads from a large group of producing points averaging 251 miles to Kansas City and 449 miles to Omaha. We can not assume, for the purposes of this case, that those rates would be reasonable for application via the traction line and its connections from Delaware to Kansas City and Omaha in face of the duly published rate of 1.9 cents from Delaware to Coffeyville, which the traction line insists, and the record shows, is a reasonable maximum rate for transportation over that line, and of the rates of 10 cents and 20 cents from Coffeyville to Kansas City and Omaha, respectively, which we found reasonable as maxima after an exhaustive investigation in the *Midcontinent Oil Case*.

We are of opinion and find that the rates found reasonable in *Midcontinent Oil Rates*, on gasoline from the Oklahoma producing points to St. Louis, as increased by the Director General, represent maximum reasonable rates on the traffic in question and joint rates not in excess of those contemporaneously maintained by the defendant carriers from the Oklahoma group will be prescribed from points on complainant's line south of Coffeyville to St. Louis and points taking the same rates by way of complainant's line to Coffeyville and the Santa Fe and M., K. & T. beyond. Since the present combination rates from the same points to Kansas City and points taking the same rates are lower than the rates from the Oklahoma group, no necessity appears for the establishment of the higher joint rates to Kansas City points on the Oklahoma group basis.

Practically no evidence was offered in support of complainant's application for joint rates on commodities other than gasoline except from Grabham, which is the only local station on its line. At this point, which has a population of about 100, is located a pumping  
52 I. C. C.



station of the Kansas Natural Gas Company. The aggregate population of points on complainant's line south of Coffeyville is approximately 7,000. It was stated for the complainant that there is a large movement into these points of oil-well machinery and supplies and general merchandise, moving generally from the Mississippi and Missouri Rivers on class rates, and outbound movements of oil-well supplies, agricultural products, and live stock. Complainant's traffic manager stated that there is no considerable movement outbound from these points under class rates, and there is no evidence as to the volume of movement outbound under commodity rates. Complainant does not interchange equipment with the defendant carriers, and foreign equipment is furnished for carload shipments destined to points off its line. No evidence was offered as to the reasonableness of the rates except that inbound shipments to points south of Coffeyville move over complainant's line on proportional rates. The proportional class rates applicable south of Coffeyville over complainant's line approximately equalize the through class rates from the Mississippi and Missouri rivers with those over the Missouri Pacific to the same points. Complainant does not publish northbound proportional rates, but collects its locals to the junction; and it was not shown how these rates northbound correspond with those over the Missouri Pacific, or with those from adjacent territory to the Mississippi and Missouri rivers.

We are of opinion and find that upon this record we are not justified in ordering the establishment of through routes and joint class and commodity rates except as hereinbefore noted.

An order in accordance with the foregoing will be entered.

52 I. C. C.

No. 8180.  
A. H. KERR & COMPANY ET AL.  
v.  
SAND SPRINGS RAILWAY COMPANY ET AL.

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*Submitted January 8, 1919. Decided January 14, 1919.*

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Complainants allege upon supplemental complaint that the failure of the defendants promptly to establish the relationship of rates on glass fruit jars and jelly glasses from Sand Springs, Okla., Muncie, Ind., Wheeling, W. Va., and Washington, Pa., to Pacific coast territory required in the original report caused them to suffer damages for which they are entitled to reparation, *Held*; That the proof offered does not establish either the fact or the amount of damage attributable to the rate adjustment. Complaint dismissed.

*John S. Burchmore* for complainants.

*T. J. Norton* and *F. E. Andrews* for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

This report deals with issues presented by a supplemental complaint. The original complaint was filed July 26, 1915, and attacked the carload rate of 75 cents per 100 pounds on glass fruit jars and jelly glasses from Sand Springs, Okla., to Pacific coast terminals and also the rates to certain intermediate points. It was alleged that these rates were unreasonable *per se*, and, more particularly, that their relation to the rates on like articles from Muncie, Ind., Wheeling, W. Va., and Washington, Pa., to the same destinations was unduly preferential of complainants' competitors at those points. No reparation was asked.

The record was closed and submitted on February 17, 1916, and on July 20, 1916, the report of the Commission was served upon the parties, 40 I. C. C., 291. It was held therein that the rates from Sand Springs had not been shown to be unreasonable, but that the relation of rates was unduly prejudicial to the complainants and unduly preferential of their competitors. No order was entered, but the defendants were advised that they would be expected within 60 days to readjust the rates in such manner as to accord to the complainants a differential of 10 cents per 100 pounds under the rates contemporaneously applied from Muncie, Wheeling, and Washington, failing which the matter might again be brought to the attention of the Commission for appropriate action. The 60-day period expired September

52 I. C. C.

18, 1916, but for various reasons, hereinafter explained, the 10-cent differential did not become effective until December 1, 1917.

By supplemental complaint filed March 9, 1918, the complainants allege that during the interim between the service of the original report and the effective date of the tariffs establishing the differential they shipped some 500 cars of fruit jars and jelly glasses to points on and intermediate to the Pacific coast; that during the same period their competitors at Muncie, Washington, and elsewhere were shipping to the same points; and that by reason of the unreasonable and discriminatory rates complained of, and particularly because of the wrongful relationship of rates and also of the failure of the defendants to comply with the Commission's findings, they suffered damage for which they are entitled to reparation. In view of these allegations the proceeding was reopened for further hearing on the question of reparation on shipments made since September 18, 1916.

It appears that soon after the report was served upon the defendants they undertook to observe the Commission's requirements by establishing on glass bottles and jars the same carload rates that were in effect on common glassware. By tariffs published to become effective November 10, 1916, they proposed rates of \$1.10 from groups A to E, inclusive, and \$1 from groups F, G, and H to Pacific coast terminals. Sand Springs is in group F, Muncie is in group C, and Wheeling and Washington are in group B. These rates were unsatisfactory to the manufacturers and upon protests filed by A. H. Kerr & Company and others they were suspended in Investigation and Suspension Docket No. 963, until September 10, 1917. Hearings were had in Chicago on January 15, 1917, and in Portland, Oreg., on January 26 and 27, 1917; but before the investigation was concluded carriers operating in eastern, western, and southern territories applied for and received permission to file tariffs proposing a general increase in freight rates, and were also authorized to file supplements canceling schedules under suspension in various investigation and suspension cases, including No. 963.

The general increase proposed in western classification territory was denied in *The Fifteen Per Cent Case*, 45 I. C. C., 303, decided June 27, 1917, and shortly thereafter the carriers again undertook to readjust the rates on glass bottles and jars to western territory. Investigation had disclosed that the rates suspended in Investigation and Suspension Docket No. 963 would have been prejudicial to certain industries on the Pacific coast and therefore in the new adjustment a lower basis was proposed. By tariffs filed to become effective September 15, 1917, the defendants proposed to establish rates of 95 cents from groups A, B, and C, 90 cents from groups D and E, and 85 cents from groups F to J, inclusive. Rates some-

52 I. C. C.

what higher were proposed to intermediate points from groups east of group F. Protests were also filed against these rates, although not by Kerr & Company or the Kerr Glass Manufacturing Company, and they were suspended in Investigation and Suspension Docket No. 1130, until January 13, 1918. On November 8, 1917, the Commission entered an order discontinuing No. 1130 and the rates therein proposed became effective December 1, 1917.

It is unnecessary for the purposes of this report to discuss the further proceedings involving transcontinental rates on bottles and jars. It appears from what has been said that literal compliance with the Commission's findings would have been effected on November 10, 1916, if the rates proposed by the carriers at that time had been permitted to be made effective. Under the circumstances the defendants can not be charged with undue delay in making the required readjustment.

Complainants themselves sought suspension of the rates which would have fixed the proper relationship between rates paid by them and those charged their competitors. While our report did not authorize defendants to increase their rates, it did not forbid them to do so. There is no showing that they exhibited bad faith in attempting to increase the rates while complying with our requirement as to relationship.

It appears that the Kerr Glass Manufacturing Company, of Portland, Oreg., one of the complainants, purchases the entire output of A. H. Kerr & Company, the other complainants, f. o. b. Sand Springs, and ships from the factory to jobbers and consumers, assuming all freight charges. The Ball Brothers Glass Company, of Muncie, and the Hazel-Atlas Glass Company, of Wheeling and Washington, both large manufacturing companies, are the complainants' most active competitors in this western territory and because of their lower costs of manufacture are able to quote prices which the complainants can not afford to accept. One of the factors contributing to their lower manufacturing expense is their proximity to the raw material, and another lies in a patented process, not available to the complainants, which enables them to make a better grade of glass at less cost.

The complainants contend that if the differential had been in effect between September 18, 1916, and December 1, 1917, they would have sold a larger quantity of their products and enjoyed greater profits. But this would imply that all other conditions affecting production and sale by the complainants and their competitors were substantially the same. The record shows, however, that the commercial advantages enjoyed by the manufacturers at Muncie, Wheeling, and Washington greatly offset the advantage that a difference of 10 cents in the freight rate would have given to the complainants.

It is therefore impossible to determine with certainty how much of complainants' alleged loss of trade or reduction in profits was attributable to the prejudicial rate adjustment and how much to the legitimate advantages of their competitors. As the Commission said in *Brooks Coal Co. v. Wabash R. R. Co.*, 39 I. C. C., 426:

Mere diminution or loss of prospective trade profits does not alone offer a basis for reparation under the act to regulate commerce. The fact of damage as well as the amount of damage must be satisfactorily established.

The proof offered does not definitely establish either the fact or the amount of damage attributable to the rate adjustment. The complaint should, therefore, be dismissed.

HALL, *Commissioner*:

The foregoing is substantially the report proposed by the examiner and served upon the parties. Exceptions thereto were filed by complainants and presented in oral argument. All but one relate to the examiner's proposed conclusion that neither the damage alleged nor the amount thereof are definitely shown by the evidence to have been attributable to the maintenance of a parity of rates from Sand Springs, Muncie, and Wheeling.

It is suggested by counsel upon argument that this conclusion is in effect a reversal of our former finding of undue prejudice. We do not so consider it. Such prejudice began with the elimination of the differential on November 15, 1914, and was not removed until December 1, 1917, when the differential was restored. Reparation is sought only on traffic moving between September 18, 1916, and December 1, 1917. But it does not follow that reparation must be awarded because it has been found that a rate adjustment is and will be unduly prejudicial. In such cases not only must the fact and amount of damage be clearly shown by the evidence, but the damage must be clearly traceable to the rate paid. *Coal Switching Reparation Cases at Chicago*, 36 I. C. C., 226.

It appears that complainants were in active competition with other manufacturers, who, by reason of lower costs of production, were able to dispose of their products on the Pacific coast at prices which the complainants could not meet except at a loss. A difference of 10 cents in the rate is said to represent a difference of approximately 17 cents a gross on quart sizes of fruit jars, yet the manufacturer at Muncie was able to, and in fact did for a time, make a net price to Pacific coast jobbers of 75 cents a gross under the normal selling price. To have met this price, complainants say, would have been ruinous to them. It does not appear that a rate difference of 10 cents in favor of complainants would have had the effect of increasing their sales or their profits. As said by the examiner, the

52 I. C. C.

record fails to show with certainty how much, if any, of complainants' loss of trade or of profits which might otherwise have been anticipated was due to the rate adjustment, even if such loss could properly be made the basis or measure of reparation.

Upon careful consideration of the record in the light of the exceptions and argument we are of opinion and find that the facts of record are correctly stated in the proposed report, that the conclusions therein indicated are sound, and it is therefore approved and adopted as part of this report.

The complaint will be dismissed.

McCHORD, *Commissioner*, dissenting:

I am unable to agree with the finding of the majority that the proof offered does not establish either the fact or the amount of damage attributable to the rate adjustment.

The majority report holds that under the circumstances the defendants can not be charged with undue delay in establishing rates in conformity with the finding in the original report. The tariff revision necessary to carry out the finding was very simple, and could have been accomplished within the 60-day period without any difficulty. The establishment of the 10-cent differential between the various manufacturing points should have been made before September 16, 1916, and not made a part of the general readjustment of rates proposed in Investigation and Suspension Docket No. 963, to become effective November 10, 1916. Therefore, I am of the opinion that the continuation of the improper adjustment was primarily due to the defendant's failure to establish within the 60-day period rates in accordance with the finding, and the fact that one of the complainants protested against the proposed rates is entitled to little, if any, consideration. In this connection it is to be noted that increases were proposed in the rates from Sand Springs.

In the original and supplemental reports it is stated that competition in the manufacture and sale of fruit jars is keen; that the Pacific coast is an important market; and that the chief competition there encountered by complainants is with the plants located at the points found to be unduly preferred.

A witness for complainants testified at the original hearing that in August, 1914, at which time the rate from Sand Springs was 10 cents per 100 pounds less than that from the eastern points, orders for delivery at these western points were taken at the same price, as far as could be ascertained, as the Muncie manufacturer. In January, 1915, shortly after the 75-cent rate was established from all points, the Muncie manufacturer reduced the price about 75 cents per gross. It was testified that the price quoted by this manufacturer would

have been ruinous to complainants; that they maintained their price, although it curtailed their business; and that they were forced to send out salesmen to sell directly to retailers because the jobbers could buy from their competitor at a lower price.

The witness for complainants at the supplemental hearing testified that during the period covered by the supplemental complaint the principal competition was with the manufacturers located at Muncie and Washington; that there had been no substantial change in the competition since the original hearing; that they could not make the same delivery price as their competitors unless their profits were shrunk or the products sold at a loss; that if the 10-cent differential had been in effect more shipments and a better profit would have been made; that the prices made by the Muncie manufacturer had to be followed if they wanted to stay in the business; and that this competitor's prices were based on its comparatively lower rate.

I do not see what the lower manufacturing costs and selling prices of complainants' competitors, due to their proximity to the raw material and the patented process used by them, have to do with this case. These are natural disadvantages to complainants which the Commission has repeatedly held it has no power to overcome. During the period in question these natural disadvantages were augmented by the transportation disadvantages which the Commission had condemned. But for the unlawful act of the carriers the complainants' disadvantage in making sales would have been 58 cents per gross on quart jars instead of 75 cents.

The Commission has held that shippers are entitled to reparation in cases where they are in competition and meet the prices of their competitors at a common market, and because of unduly prejudicial rates are compelled to shrink their profits. *Mebius & Drescher Co. v. Central California Traction Co.*, 42 I. C. C., 599; *U. S. Cast Iron Pipe & Fdy. Co. v. S. Ry Co.*, 44 I. C. C., 757; *Pittsburgh Steel Co. v. P. & L. E. R. R. Co.*, 39 I. C. C., 312; and various other cases involving charges on shipments to and from iron and steel industries, and *Johnstown, Pa., Switching*, 43 I. C. C., 654.

In my judgment the facts of record conclusively show the fact and amount of damage, and that complainants are entitled to reparation to the extent of 10 cents per 100 pounds on the shipments forwarded during the above period.

I am authorized to state that COMMISSIONER MEYER joins me in this dissent.

52 I. C. C.

No. 8216.<sup>1</sup>

## TEXAS CEMENT PLASTER COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted May 3, 1916. Decided February 20, 1919.*

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Rates on cement plaster, in carloads, from Plasterco, Tex., to destinations in various states, found to have been unduly prejudicial. Reparation denied. The present rates, which were initiated by the Director General of Railroads, are not in issue. Complaint dismissed.

*W. V. Hardie and S. M. Gloyd* for complainant.

*Robert Dunlap, T. J. Norton, Gardiner Lathrop, S. W. Haynes, and R. G. Merrick* for Atchison, Topeka & Santa Fe Railway Company; Gulf, Colorado & Santa Fe Railway; and Louisiana & Texas Railway; *W. F. Dickinson* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company and its receiver; *Thos. Bond* and *Arthur A. Haid* for St. Louis-San Francisco Railway Company and its receiver; Kansas City, Clinton & Springfield Railway Company, and others; *E. H. Shaufler* and *F. W. Fisher* for Kansas City, Mexico & Orient Railroad Company; *E. J. Naylor* for Kansas City, Mexico & Orient Railway Company of Texas; and *C. P. Dowlin* for Fort Worth & Denver City Railway Company and Colorado & Southern Railway Company.

## REPORT OF THE COMMISSION.

## DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

*WOOLLEY, Commissioner:*

The complaints in these cases were brought by a Texas corporation engaged in the manufacture of cement plaster at Plasterco, Tex., and attack as unreasonable and unduly prejudicial the rates on cement plaster, in carloads, from Plasterco to destinations in various states.

The rates referred to herein are those in effect at the time of the hearing, unless otherwise indicated, and are stated in cents per 100 pounds.

The allegations of undue prejudice are predicated upon the refusal of certain of the defendants to establish and maintain through routes and joint rates for the transportation of cement plaster from Plasterco

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<sup>1</sup> This report also embraces No. 8216 (Sub-No. 1). *Same v. Kansas City, Mexico & Orient Railroad Company et al.*



to points in the states of Missouri, Kansas, Oklahoma, Arkansas, Louisiana, Mississippi, Alabama, Colorado, and New Mexico, located on the lines of so-called destination roads, defendants herein, and herein-after referred to as the miscellaneous destinations, while maintaining such routes and rates from Acme, Tex., to the same destinations; the action of the St. Louis-San Francisco Railway Company, hereinafter referred to as the Frisco, in reducing by 2 cents the rate from Acme, Tex., to certain points on its line in Missouri without making a similar reduction from Plasterco to such destinations; the maintenance by the Atchison, Topeka & Santa Fe Railway Company, hereinafter referred to as the Santa Fe, of rates on cement plaster from Plasterco to destinations on the Santa Fe system in Oklahoma, Kansas, Missouri, Iowa, Illinois, and Louisiana that are 2 cents higher than the rates contemporaneously in effect from Acme and Oriental, N. Mex., to the same destinations; and the cancellation on September 19, 1910, by the Chicago, Rock Island & Pacific Railway Company of joint rates on cement plaster from Plasterco to destinations on its lines. The establishment of through routes where not now in effect and reasonable and nondiscriminatory joint rates is asked. Reparation is sought on certain shipments which moved to points on the Santa Fe.

Plasterco is situated approximately 129 miles south of the Texas-Oklahoma boundary, on the line of the Kansas City, Mexico & Orient Railroad, hereinafter referred to as the Orient. Acme, Tex., is located on the Fort Worth & Denver City Railroad and the Quanah, Acme & Pacific Railroad, hereinafter referred to, respectively, as the Fort Worth and the Acme & Pacific, 5 miles from Quanah, Tex., the point of interchange between those carriers and the Frisco. Complainant established its mill at Plasterco in the latter part of 1909.

Cement plaster is a powder manufactured from gypsite dirt and gypsite rock, and is usually shipped in sacks. The average selling price at the mill at the time of the hearing was stated to be \$3.80 per ton. Complainant's mill has a capacity of about 60,000 tons per year, but for the two years prior to the hearing its annual shipments aggregated only a little over 16,000 tons, due, it is alleged, to the discrimination in rates complained of.

The record does not sustain the charge that the rates from Plasterco were unreasonable *per se*.

The main allegation of undue prejudice is against the fact that to the miscellaneous destinations defendants maintain joint rates on cement plaster from Acme, Tex., which are lower than the combination rates in effect from Plasterco to the same destinations, and the refusal of defendants to establish through routes and joint rates from Plasterco. The principal defense of the adjustment of rates as between Acme, Tex., and Plasterco was assumed by the Frisco. Except to the Mis-

souri points, to which the Frisco reduced its rates by 2 cents from Acme, Tex., equal joint rates are maintained from Acme, Tex., and Plasterco on cement plaster to points on the Frisco.

Complainant claims that because of the narrow margin between the cost of manufacture and the selling price of cement plaster, the freight rate plays an important part in the marketing of this commodity, and that the failure of these defendants to publish and maintain joint rates from Plasterco practically closes the markets on their lines to complainant, while the maintenance of joint rates from Acme, Tex., gives to the latter point a distinct advantage in reaching these markets. The evidence does not indicate the actual difference in the rates from Acme, Tex., and from Plasterco to the miscellaneous destination points, but witness for complainant insisted that the rates from Plasterco are so much higher than the rates from Acme, Tex., that complainant has been unable to make any shipments to such points. Aside from the alleged discrimination in the amount of rates, complainant also contends that it is at a disadvantage in comparison with its competitors at Acme, Tex., on account of the fact that, as Acme, Tex., is accorded joint rates, the producers there are enabled quickly to ascertain the rates to apply, which is said to be of advantage in quoting prices, whereas complainant experiences difficulty and delay in determining the actual combination rates, inasmuch as the tariffs of the destination lines, which are not on file with the Orient at Plasterco, are not readily available to complainant.

At the time of the hearing equal joint rates were in effect from Acme, Tex., and Plasterco on cement plaster to 5,298 destinations on the lines of various carriers serving the general territory to which complainant desires joint rates over the lines of defendants. Acme, Tex., and Plasterco are generally grouped as to joint class rates and also to a considerable extent as to joint commodity rates, the rates on cement plaster being an exception.

The Orient interchanges traffic with the Frisco at Altus, Okla., 142 miles north of Plasterco. Traffic via the Frisco from Acme, Tex., passes through Altus. The distance from Quanah, the junction of the Frisco and the Fort Worth and the Acme & Pacific, to Altus is 36 miles. The rate from Acme, Tex., and from Plasterco to Altus is 9.6 cents.

In support of the contention of the Frisco that Acme, Tex., and Plasterco should not be placed upon the same rate basis with respect to this traffic, witness for that defendant went with some detail into the history of the cement plaster rates from Texas points. The cement plaster plant at Acme, Tex., was the first to locate in that territory, and at that time the traffic moved over the Fort Worth and

its connections. The rates of these carriers, it is claimed, were very low and were established to Kansas City and adjacent territory, with a view to enabling the Acme, Tex., producers to compete with mills in Kansas and Iowa. When the Frisco extended its line to Quanah in 1902 it was obliged to meet rates already established in order to participate in the traffic, and as an inducement to the Fort Worth to deliver this traffic to the Frisco at Quanah, the Fort Worth was allowed a division of 3 cents out of the through rate for its haul of 5 miles from Acme, Tex., except on traffic destined to St. Louis, on which its division was and is 2.5 cents. The same divisions are accorded the Acme & Pacific, which owns no track between Acme, Tex., and Quanah, but operates over the line of the Fort Worth.

Many exhibits were introduced on behalf of the Frisco showing the ton-mile revenue on traffic from Plasterco as compared with the revenue on that from Acme, Tex., and from Eldorado, Okla., upon which it is argued that, allowing the carriers the same earnings from Plasterco as they receive on traffic from Acme, Tex., or Eldorado, the Plasterco rates should be an average of 3.5 cents higher than the rates from those points. It should be remembered, however, that in any group arrangement of rates there generally exists inequality both of distance and of earnings as between the various points within the group.

In *Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co.*, 26 I. C. C., 508, we held that the defendants in that case should establish joint rates on cement plaster from Plasterco to destinations on the line of the Frisco not exceeding those contemporaneously in effect from Acme, Tex., to the same destinations. Upon the expiration of our order the Frisco filed schedules in which it proposed increases ranging from 3.5 to 4.5 cents in the rates from Plasterco to its stations in Oklahoma, Kansas, Missouri, and Arkansas and to Memphis, Tenn. The schedules were suspended, and in *Cement-Plaster from Plasterco, Tex.*, 43 I. C. C., 615, we found that the proposed increases had not been justified and ordered the suspended schedules canceled.

In *Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co.*, *supra*, we stated that the carriers generally conceded that Plasterco and Acme, Tex., should take the same rates on cement plaster. The Frisco now contends that the basis of rates on cement plaster generally throughout the southwest is so low that the carriers are not justified in extending the Acme, Tex., rate the added distance of approximately 100 miles to Plasterco. It is to be noted, however, that while the difference in distance via the Frisco is as stated, the haul of the Frisco is 36 miles less on Plasterco traffic than on that from Acme, Tex. This excess in distance is comprised in the haul of the Orient, which in effect supported the complaint. Complainant asserts that the Frisco is the logical intermediate carrier between the Orient and the

so-called destination lines. This does not appear to be so, however, as to all of the destinations. Those in Colorado and New Mexico, for instance, are reached via Chillicothe, Tex., and the Fort Worth. The average distance from Acme, Tex., to these points is 437 miles, and from Plasterco 568 miles. The Fort Worth allows the Acme & Pacific 3 cents on traffic delivered to the former at Quanah, which is the same division accorded the Acme & Pacific by the Frisco.

Substantially the same general character of evidence is offered in this proceeding to justify a difference in rates from Plasterco and from Acme, Tex., that was introduced in less comprehensive form in *Cement-Plaster from Plasterco, Tex., supra*, in justification of the proposed rates from Plasterco. The present record contains nothing that would warrant a finding with respect to the relation of rates from Acme, Tex., and from Plasterco different from the findings in that case and in *Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co., supra*.

We accordingly find this adjustment of rates to have been unduly prejudicial to complainant and unduly preferential of its competitors at Acme, Tex., and that Plasterco and the complainant were entitled to through routes for the transportation of cement plaster, in carloads, from Plasterco to the miscellaneous destinations defined in the complaint, and joint rates over such routes not in excess of the rates contemporaneously in effect from Acme, Tex., to the same destinations.

With respect to the situation on the Santa Fe, exhibits were filed by complainant containing comparisons of rates from Acme, N. Mex., and from Plasterco, to representative destinations on the Santa Fe in the states of Oklahoma, Kansas, Missouri, Iowa, and Illinois, which show that the rates from Plasterco are uniformly 2 cents higher than the rates to the same destinations from Acme and Oriental, N. Mex. Acme and Oriental are in the eastern part of New Mexico on the Roswell-Pecos branch of the Santa Fe. The Orient connects with the Santa Fe at Cherokee, Okla., and Harper and Wichita, Kans. In the tariffs publishing rates on cement plaster the routing is restricted to Cherokee and Harper. Traffic from Plasterco is generally routed via Cherokee, but some destinations route via Harper and a few via the Texas & Pacific Railway and Fort Worth, Tex. The distance from Acme, N. Mex., to Cherokee is 457 miles and to Harper 470 miles, and from Oriental 535 and 548 miles, respectively. The distance from Plasterco to Cherokee is 311 miles and to Harper 354 miles. To the destinations reached via Cherokee, Plasterco is 146 and 224 miles, respectively, less distant than are Acme and Oriental, N. Mex., and to those reached via Harper, 116 and 194 miles less distant.

The rate from Plasterco to Santa Fe points in Oklahoma is 15 cents and the average distance 424 miles, making the average ton-mile revenue 7.1 mills. The rate from Acme and Oriental, N. Mex., to the same destinations is 13 cents, the average distance from Acme, N. Mex., 590 miles, and from Oriental, 653 miles, and the average revenue from Acme, N. Mex., 4.4 mills, and from Oriental, 3.9 mills. To 32 typical destinations in Kansas the average rate from Plasterco is 15.3 cents, average distance, 491 miles. From Acme and Oriental, N. Mex., the average rate is 13.3 cents, and the distances 607 and 685 miles, respectively. The earnings are 6.1 mills per ton-mile from Plasterco, 4.2 mills from Acme, N. Mex., and 3.8 mills from Oriental. As compared with these earnings it was shown that the net ton-mile revenue of the Santa Fe system on cement plaster for the year ended June 30, 1915, was 10.64 mills for an average haul of 150 miles.

The group to which the 15-cent rate from Plasterco and the 13-cent rate from Acme and Oriental, N. Mex., apply, also extends over a large portion of eastern Kansas and a small strip of western Missouri as far north as St. Joseph. The area within this group is indicated by the fact that from Thackerville, the southernmost point in Oklahoma on the Santa Fe, to St. Joseph, the distance is 513 miles. To western Kansas the rates from Plasterco range from 17 to 18.5 cents. The 15-cent group, however, comprises the greater part of the Santa Fe's mileage in that state.

It is urged by the Santa Fe that the existing low level of rates on cement plaster is caused by the peculiar circumstances surrounding the manufacture and marketing of this product. Mills spring up wherever a supply of the right kind of gypsite dirt or rock can be found, and the mills, in order to meet competition at the various markets, demand rates that will enable them to compete with mills already in existence and without regard to the proximity of the latter mills to the markets. It is stated that because of the light traffic on some of the branch lines in the southwest the carriers have yielded to the demands of the cement plaster manufacturers in order to share in that traffic, and that this situation has brought about abnormally low rates on this commodity in this territory.

On traffic from Plasterco the Santa Fe allows the Orient 6.5 cents for its haul of 311 miles to Cherokee on shipments destined to points in Oklahoma. This yields the Orient 4.2 mills per ton-mile. The average haul of the Santa Fe beyond Cherokee to Oklahoma destinations is shown to be 112 miles, for which it receives 8.5 cents, or 15.2 mills per ton-mile. On traffic destined to points in Kansas the Santa Fe allows the Orient 6½ cents for its haul of 354 miles to Harper, or 3.8 mills per ton-mile. For the average haul of 137 miles

52 I. C. C.

beyond Harper to Kansas destinations, the Santa Fe receives 8.7 cents, which yields 12.7 mills per ton-mile.

To Missouri, Iowa, and Illinois, the relative adjustment is the same as to Oklahoma and Kansas. To 20 points, said to be representative, the average rate from Plasterco is 21.8 cents and from Acme and Oriental, N. Mex., 19.8 cents. The earnings from Plasterco are 5 mills, from Acme, N. Mex., 3.9 mills, and from Oriental 3.4 mills. These rates are based on minima of 30,000 pounds to some of the points and 40,000 pounds to others. From Acme and Oriental, N. Mex., to points in those states, rates still lower by 1.5 to 3 cents are applicable in connection with a minimum of 60,000 pounds, making a difference in rates of 3.5 to 5 cents in favor of the New Mexico mills on shipments moving under this higher minimum. No evidence was offered concerning rates to Louisiana, assailed in the complaint.

In *American Cement Plaster Co. v. A., T. & S. F. Ry. Co.*, 38 I. C. C., 639, decided subsequent to the hearing in this case, the complainant alleged the rates on cement plaster, in carloads, from Acme, Tex., to points on the line of the Santa Fe in the states of Oklahoma, Kansas, Colorado, Missouri, Iowa, and Illinois to be unreasonable and unjustly discriminatory as compared with rates on that commodity from Acme and Oriental, N. Mex., to the same destinations. The Acme, Tex., rates, like those here under consideration, were 2 cents higher than the rates from Acme and Oriental, N. Mex. We held that the rates attacked were unduly prejudicial on shipments from Acme, Tex., to all of the points involved taking rates from Acme and Oriental, N. Mex., higher than 13 cents, to the extent that the rates from Acme, Tex., exceeded the rates from Acme, N. Mex., to the same destinations. The 13-cent rate is blanketed for an average distance of 590 miles from Acme, N. Mex., and approximately 653 miles from Oriental, to points in Oklahoma. The distances from Acme, Tex., are less than the distances from Acme and Oriental, N. Mex., by 55 and 133 miles, respectively.

The evidence here is similar to that presented in the case last cited. The mills at Acme, Tex., and at Plasterco compete in the same markets, and the transportation conditions affecting both points appear to be substantially similar. Traffic from each moves over two lines, as compared with a single-line haul from the New Mexico mills involved. While the difference in distance in favor of Plasterco is in excess of that in favor of Acme, Tex., over Acme and Oriental, N. Mex., the haul of the Santa Fe on Plasterco traffic delivered to it at Cherokee is approximately 263 miles less, and on that received at Harper 276 miles less, than on traffic from Acme, Tex., interchanged at Amarillo, Tex.

We find that the rates assailed from Plasterco to destinations on the Santa Fe and affiliated lines in the states of Illinois, Iowa, Missouri, Kansas, and Oklahoma, taking rates from Acme and Oriental, N. Mex., in excess of 13 cents, were unduly prejudicial to complainant, and unduly preferential of its competitors at Acme and Oriental, N. Mex., to the extent that they exceeded the rates from the last-named points to the same destinations.

Reparation is asked on specified shipments to points on the Santa Fe, measured by the difference in rates Plasterco over Acme and Oriental, N. Mex.

Witness for complainant testified that these shipments were sold in competition with the mills at Acme and Oriental, N. Mex., and that in order to meet such competition it was necessary to shrink the selling price 40 cents per ton to offset the difference in freight rates. The record discloses, however, that the New Mexico mills are not the only competitors of complainant for business on the Santa Fe. It was admitted that competition also exists at mills in Oklahoma, Kansas, and Iowa; that it was likewise necessary to shrink the selling price to meet the competition of the latter mills; and that witness was unable to say whether the Oklahoma or the Acme and Oriental, N. Mex., mills were complainant's keenest competitors. In the absence of clear proof of damage to complainant from the assessment of the rates found unduly prejudicial, the prayer for reparation must be denied.

The situation on the Rock Island differs somewhat from either of those previously considered. In the latter part of 1909, and subsequent to the establishment of complainant's plant at Plasterco, the Rock Island published joint rates from Plasterco to destinations on its line equal to the rates which had been in effect for about five years prior thereto from Acme, Tex. The joint rates from both Plasterco and Acme, Tex., were canceled effective September 19, 1910. Complainant asks that these rates be restored from Plasterco.

There are three junction points at which traffic originating on the Orient may be delivered to the Rock Island, namely, Lone Wolf and Clinton, Okla., and Wichita, Kans. Effective October 29, 1915, and May 18, 1916, the Rock Island established proportional rates for application from Lone Wolf and Clinton on cement plaster originating on the Orient, which will later be discussed. For the present the references herein to rates from Plasterco will indicate the combinations of locals which became effective upon cancellation of the joint rates.

Complainant asserts that under the combination rates it is unable to compete with cement plaster manufacturers located on the Rock

Island. The principal points of competition are Okeene, Okla., located on a branch line a short distance north of Clinton, and Acme, Okla., situated on a spur extending from Rush Springs, Okla., which is 56 miles south of El Reno, Okla. The joint rates in effect from Plasterco prior to September 19, 1910, were 5 to 8 cents higher than the rates from Acme, Okla., to Rock Island points. This spread was greatly increased when the joint rates from Plasterco were canceled. An exhibit filed by complainant shows that to 35 points in Oklahoma, the average rate from Acme, Okla., is 8.7 cents, whereas, the average combination rate from Plasterco is 16.2 cents. The average under the previous joint rates from Plasterco was 13.5 cents. To six representative points in Arkansas the average rate from Acme, Okla., is 9.4 cents, the average combination rate from Plasterco 24.4 cents, and the average previous joint rate from Plasterco 18 cents. To 12 representative points in Kansas the average rate from Acme, Okla., is 13.7 cents, the average combination rate from Plasterco 22.6 cents, and the average former joint rate from Plasterco 15.2 cents.

It is stated by the Rock Island that the joint rates from Plasterco were entered into by it through inadvertence; that an attempt was made to withdraw from them soon after their establishment, but because of complications in publishing the reissues of its tariffs the cancellation was not accomplished until the rates had been in effect for nearly a year; and that the controlling reason for their cancellation was the fact that they were considered so low that the Rock Island could not afford to participate in the rates to points on its line, although it was deemed expedient to continue joint rates to Memphis, Tenn., and Kansas City and St. Louis, Mo., as terminal rates. The Rock Island also participates as an intermediate carrier in joint rates on cement plaster from Plasterco to points beyond its rails as well as in joint class rates, and to a considerable extent in joint commodity rates, from Plasterco to points on its line.

From Eldorado, Okla., a point on the Frisco about 15 miles north of Acme, Tex., the Rock Island publishes joint rates on cement plaster to points on its line in Kansas. It also participates in joint rates from mills off its line, including Eldorado, to points in Oklahoma under an order of the Corporation Commission of Oklahoma. To the 35 Oklahoma points shown in complainant's exhibit, the rates from Eldorado range from 10 cents to 13 cents for two-line hauls of from 81 to 368 miles. As compared with the combination rates in effect from Plasterco to points on the Rock Island, complainant calls attention to the joint rates from Plasterco to points in Oklahoma on the Frisco, established in compliance with our decision in *Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co.*, *supra*, the maximum rate being 52 1/2 C. C.



13 cents for distances ranging from 303 to 497 miles. The 13-cent rate also applies via Sweetwater, Tex., the Texas & Pacific, Fort Worth, Tex., and the Frisco to points in Oklahoma 348 to 458 miles distant from Plasterco. Other carriers whose lines cross those of the Rock Island at various points in the states of Oklahoma and Kansas have in effect joint rates from Plasterco appreciably lower than the combination rates applicable to points on the Rock Island in the same general territory.

With a view to meeting the objections of complainant, the Rock Island established proportional rates from Lone Wolf and Clinton, applicable on cement plaster originating at Plasterco. To points in Oklahoma these rates are made on a mileage scale ranging from 5 cents to points 5 miles and less beyond the junctions, to 13 cents for distances 300 miles or over, making through rates from Plasterco to points in Oklahoma of from 15 cents to 23 cents. To points on the Rock Island beyond the state of Oklahoma the proportionals are the same as the rates from Okeene and Acme, Okla. For its haul from Plasterco to Clinton the Orient charges 10 cents. The rates from Plasterco to such destinations are higher, therefore, by that amount than the rates from the mills on the Rock Island.

Witness for the Rock Island asserted that these proportional rates were based on Clinton and Lone Wolf because those junctions with the Orient are practically equidistant with Acme, Okla., from the destinations to which the rates apply. The Rock Island has two main lines which traverse the state of Oklahoma, one running almost due north and south, and the other east and west. These lines intersect at El Reno, approximately in the center of the state. Clinton is 68 miles west of El Reno, and Acme, Okla., as stated, is about 56 miles south of El Reno. Therefore, to points in the eastern part of Oklahoma and in the states of Kansas and Arkansas the Rock Island's haul on traffic from Plasterco is nearly the same as on traffic from Acme, Okla. The distance from Plasterco to Lone Wolf is 170 miles, and to Clinton 209 miles.

Complainant contends that while a somewhat higher charge might properly be made on cement plaster from Plasterco than from Acme, Okla., to points on the Rock Island, in view of the greater distance and the two-line haul, the spread in the rates under the proportionals is too great and effectually excludes complainant from markets on the Rock Island. Witness for the Orient testified that some months prior to the hearing the Orient had stated its willingness to publish a proportional rate of 5 cents from Plasterco to Lone Wolf and Clinton, to be added to the proportionals which the Rock Island had expressed its intention to establish, provided the resulting combination rates

were not lower than the through rates from Acme, Tex., to certain junction points in the vicinity of Clinton.

We find that the rates complained of on cement plaster from Plasterco to destinations on the Rock Island were unduly prejudicial to complainant and unduly preferential of its competitors at Acme and Okeene, Okla., to the extent that they exceeded by more than 5 cents the rates contemporaneously in effect to the same destinations from Acme, Okla., and that Plasterco and complainant were entitled to through routes and joint rates to such destinations.

Subsequent to the submission of these cases, the rates attacked have been increased by the Director General of Railroads under the provisions of the federal control act. The Director General has not been made a party defendant. Since the rates so initiated are not an issue they are not reviewable in this proceeding. The complaints will be dismissed.

521. C. C.

No. 10103.  
STEINHARDT & KELLY  
v.  
ERIE RAILROAD COMPANY.

*Submitted October 10, 1918. Decided February 26, 1919.*

Upon complaint that demurrage charges assessed at Jersey City, N. J., on numerous carloads of apples from various interstate points were unlawful in that notices of arrival did not comply with tariff requirements; Found, That such defects are not shown to have been the proximate cause of the detention. Complaint dismissed.

*Leo Oppenheimer and Leo N. Haiblum for complainant.  
M. B. Pierce for defendant.*

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

By his complaint seasonably filed, Joseph H. Steinhardt, doing business in New York, N. Y., as Steinhardt & Kelly, alleged that the demurrage charges on numerous carloads of apples, in boxes, shipped from various interstate points to New York, assessed by the defendant at Jersey City, N. J., during October, November, and December, 1915, and collected January 26, 1918, were unlawful in that the arrival notices did not contain complete information with respect to the shipments, as specified in the tariffs. Reparation is asked.

The shipments originated west of the Missouri River and were billed to New York. They were held at Jersey City awaiting complainant's disposition orders and later forwarded to Duane street pier, New York. Demurrage was assessed for detention at Jersey City in excess of the 10 days' free time allowed under the tariff.

The defendant's tariff provided as follows with respect to notice:

Notice shall be sent or given consignee by carrier's agent in writing, or as otherwise agreed to by carrier and consignee, within 24 hours after arrival of cars and billing at destination, such notice to contain point of shipment, car initials and numbers, and the contents, and, if transferred in transit, the initials and number of the original car. In case car is not placed on public-delivery track within 24 hours after notice of arrival has been sent or given, a notice of placement shall be sent or given to consignee.

When the cars arrived at Jersey City, the complainant was notified by telephone and confirmatory written notices were thereupon mailed him. These notices contained the car initials and numbers

but did not show the contents of the cars or originating points. The complainant contends that they were therefore defective as he was unable, without such information, to make disposition of the shipments. The tariff also provided that where notice has been given in substantial compliance with its requirements, the consignee shall not thereafter have the right to call in question the sufficiency of such notice unless within 48 hours from 7 a. m. following the day on which notice is sent or given he shall serve upon the delivering carrier a full written statement of his objections to the sufficiency of such notice. With the exception of one letter addressed by complainant to the defendant's agent at New York, under date of September 20, 1915, no such objections were filed with the defendant. It appears that the shipments moved by way of Chicago, Ill., and Salamanca, N. Y., and that when they reached those points the complainant was advised by telephone of the time they might be expected to reach Jersey City; that the consignees of fruit at New York, including complainant, are to a great extent advised by the consignors concerning their shipments before arrival of the cars and require of the delivering carrier only such information as was included in the notices given the complainant; that, under a general practice, when more complete data covering cars arriving at Jersey City is desired, consignees make inquiry by telephone of the defendant's office at that point; that the complainant regarded the notice as in substantial compliance with the tariff as is evidenced by the fact that in the year 1914, he paid demurrage at Jersey City on a large number of cars, based on similar arrival notices; and that during the period in question the defendant's agent at Jersey City specifically advised complainant that considerable demurrage was accruing on certain of the cars that were being detained for unusually long periods. It also appears that in the informal presentation of this claim, August 3, 1916, it was represented by complainant that the fruit was in the main intended for export and that the demurrage accrued not "by the acts of the carriers" but solely by reason of the curtailment of export shipment and congestion at the New York ports due to the war.

The purpose of a notice of arrival is to apprise the consignee that a car has reached destination or a recognized hold point and is being held for delivery or awaiting disposition orders. Obviously the notice should be clear and definite. The consignee should be given all necessary information. On the other hand, if the notice does not sufficiently apprise him of the situation, he should seek further enlightenment from the carrier. This is contemplated by the provision mentioned above that, where notice has been given in substantial compliance with the requirements of the tariff, the sufficiency of the notice may not be questioned after the expiration of a specified time.

What constitutes "substantial compliance" in a particular case is a question not free from difficulty. It would seem that in its determination we must be guided to some extent by the circumstances surrounding the transaction and that no hard and fast rule can be laid down. Unlike freight charges, demurrage charges are in the nature of a penalty and are imposed not for the benefit of a carrier, but in order to promote the free movement of cars in the public interest. It would be manifestly unjust to the public, where the information contained in an arrival notice, in connection with that already possessed by the consignee, was all that it needed or desired to transact business in the customary way, to hold that such consignee could, several years later, set up the insufficiency of the notice as a ground for the refund of demurrage charges legally applicable for detention due to the consignee. While the case before us is upon the borderland, we are of opinion that, in the light of the surrounding circumstances, the arrival notices were in substantial compliance with the requirements of the tariff. The complaint will be dismissed.

52 I. C. C.

No. 9910.  
**MOBRIDGE GROCERY COMPANY**  
v.  
**CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY**  
**ET AL.**

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*Submitted December 13, 1918. Decided February 26, 1919.*

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1. Carload commodity rates for the transportation of wholesale groceries from Chicago and Rock Island, Ill., Duluth and St. Paul, Minn., and points taking same rates to Mobridge, S. Dak., found to be unduly prejudicial to the extent specified in the report.
2. Less-than-carload class rates from Mobridge, S. Dak., to stations in North Dakota and Montana on the line of the defendant, not found to be unduly prejudicial.
3. Reparation denied.

*H. W. Bishop* for complainant.

*J. N. Davis* and *C. A. Lahey* for Chicago, Milwaukee & St. Paul Railway Company.

*R. Walton Moore* for Director General of Railroads.

**REPORT OF THE COMMISSION.**

**DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.**

**AITCHISON, Commissioner:**

The report proposed by the examiner who heard the above-entitled case was served upon the complainant and defendant Chicago, Milwaukee & St. Paul Railway Company, hereinafter referred to as the Milwaukee. Exceptions thereto were filed by the complainant. Since the hearing the Milwaukee has been taken under federal control. General Order No. 28 of the Director General of Railroads which, on June 25, 1918, advanced freight rates generally throughout the country, increased the various rates here in issue substantially uniformly 25 per cent. A supplemental complaint has made the Director General of Railroads a party defendant, and raises substantially the same issues with respect to the increased rates as were presented in the original complaint. The Director General's answer is that the complainant is not entitled to relief, but consents to a consideration of the case on the record already made in so far as the same is relevant and material to the determination of the questions properly in issue. No party has sought further hearing, and none has been had. Except as otherwise specifically noted it is to be understood that the rates herein stated are those which were in force prior

to June 25, 1918, although they may for convenience be recited in the present tense, and are stated in cents per 100 pounds.

The complaint is much broader in scope than the issue finally reached, upon which this controversy must turn. Allegations as to the unreasonableness of the assailed rates having been abandoned at the hearing will not be considered or determined on a record insufficient to warrant conclusions as to these claims.

The substantial question is whether the Milwaukee's adjustment of carload commodity rates on certain articles jobbed by complainant, from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., and points taking the same rates, to Mobridge, Aberdeen, S. Dak., and other near-by jobbing centers, and the less-than-carload rates applicable from such cities to points on the line of the Milwaukee in North Dakota and Montana subject the complainant and Mobridge to undue and unreasonable prejudice and disadvantage and unduly prefer Aberdeen and the other jobbing points. The contention of complainant was thus tersely stated at the hearing:

We contend that the carload commodity rate into Mobridge added to the less-than-carload rate out of Mobridge forms a combination which is higher than similar combinations on competing jobbing points.

There is also a claim for reparation.

Under the adjustment complained of Aberdeen could job wholesale groceries, received from Chicago, at stations on the line of the Milwaukee in the destination territory outlined at an average advantage under Mobridge of 11.68 cents per 100 pounds. Complainant asks that each factor of the rates it pays on the commodities in which it deals shall be adjusted so as to enable it to compete on a parity with Aberdeen. While other competing cities are named in the complaint and upon the record, evidently it is with Aberdeen the complainant comes in keenest competition, and the rate adjustment most appropriately can be considered with respect to that point, as representative of the whole situation.

We have never accepted such a state of facts as of itself sufficient to warrant us in finding undue or unreasonable prejudice or disadvantage. With respect to this contention, in *Wichita Wholesale Furniture Co. v. A., T. & S. F. Ry. Co.*, 44 I. C. C., 339, 343, we said:

The question of rates to and from jobbing points has been and is continually being pressed upon our attention by complaining shippers. The desire of jobbers located at various points is to have rates into and out of their particular points equalized, so that through rates to consuming territories shall be the same, no matter through which point the traffic moves. It is well settled that undue prejudice and disadvantage against a distributing point can not be predicated merely upon the fact that the combination of inbound and outbound rates exceeds the combination via a competitive distributing point. *Rates on Knitting Factory Products*, 25 I. C. C., 634, 639. \* \* \*

It is not practicable to have rates into and out of all jobbing points so constructed that

52 I. C. Q.

the resulting through charges from the factory to ultimate destination are the same via all jobbing centers. Advantages of location, competitive conditions, the volume and flow of traffic, and numerous other considerations come into play, and must be given due weight in determining the adjustment of rates into and out of different jobbing points.

With these considerations in mind, we will examine the record, first, with reference to the inbound commodity rates, and, secondly, with respect to the outbound class rates from Mobridge and its competitors.

The complainant, a South Dakota corporation, established a wholesale grocery and fruit jobbing office and warehouse at Mobridge, September 15, 1917, on which date, after negotiations with complainant, the Milwaukee's tariff I. C. C. No. B-3511, providing reduced carload commodity rates for the transportation of groceries from Chicago, Rock Island, Duluth, and St. Paul, and points taking same rates, became effective to Mobridge.

Mobridge is a comparatively new town of about 3,000 inhabitants, situated on the east bank of the Missouri River. It is served by no carrier subject to the act to regulate commerce other than the Milwaukee. Prior to the completion of the Chicago, Milwaukee & Puget Sound Railway, now consolidated with and a part of the line of the Milwaukee, Mobridge was a western terminus of the line of that defendant. Mobridge by way of the line of the Milwaukee, the short line from Chicago and St. Paul to Mobridge, from Minneapolis, Duluth, Minn., and Chicago, is distant 384, 542, and 796 miles, respectively. Aberdeen, 98 miles east of Mobridge, with a population of approximately 14,000, is also located on the line of the Milwaukee, but, in addition, is served by the lines of Chicago & North Western, Great Northern, and Minneapolis & St. Louis railways. The double track of the Milwaukee's line terminates at Aberdeen. The country between Aberdeen and Mobridge does not present any physical difficulties to railroad operation, and is flat to the immediate vicinity of Mobridge, where it becomes rolling. The population of South Dakota, however, is mainly east of a line drawn south through Aberdeen; hence the tonnage west of Aberdeen is less dense than that east of and to Aberdeen. But complainant contends that when commodity rates from Chicago and Duluth to Aberdeen slightly lower than those which now obtain for the transportation of groceries, were established 15 years ago, the traffic to Aberdeen was then no greater than is the present tonnage to Mobridge.

In the appendix to this report are shown in detail the articles upon which the commodity rates apply from Chicago, Rock Island, St. Paul, and Duluth, and points taking same rates to Mobridge; the packages; minima; and the rates. For immediate view the follow-



ing general designations of the commodities and the rates thereon from the points of origin named will suffice:

Commodity.	Chicago.	Rock Island.	St. Paul.	Duluth.
Canned goods, milk, and pickles.....	48.8	48.8	.....	44.8
Soap and washing compound, and sugar, except maple.	47.8	47.8	.....	43.8
Paper.....	43.8	43.8	37.8	39.8
Vinegar.....	43.3	43.3	37.3	39.3
Glucose, sirup, and starch.....	40.8	39.8	34.8	36.8

Rock Island takes the same rates as Chicago, except on glucose, sirup, and starch; Duluth takes 4 cents under Chicago and St. Paul 2 cents under Duluth. The commodity rates from the four points of origin to Aberdeen are uniformly 14.8 cents under the rates from the same points to Mobridge. The difference of 14.8 cents, Mobridge over Aberdeen, between which, as we have seen, the distance is 98 miles, is the fifth-class distance scale rate for 100 miles fixed by the Board of Railroad Commissioners for the State of South Dakota, which was not protested by the Milwaukee. Complainant compares this spread of 14.8 cents Mobridge over Aberdeen with the differences in the rates on other commodities to Mobridge and Aberdeen.

Mobridge receives sugar from Mississippi River points, flour from Minneapolis, and salt from Michigan points, the latter, presumably via Duluth. The spread on sugar, Aberdeen under Mobridge, is 7 cents; on flour, 3.5 cents from Minneapolis, and on salt from Michigan and Duluth each 8 cents. On the commodities named in the complaint, the rates from Chicago, Rock Island, Duluth, and St. Paul are made by the full combination of rates to and from Aberdeen.

The arithmetical averages of the commodity rates covered by the complaint from Chicago to Mobridge and to Aberdeen are, respectively, 45.85 and 31.05 cents, which yield ton-mile earnings of 11.5 and 8.9 mills, respectively. Complainant contends the rate per ton-mile afforded from rates to Mobridge should not exceed that derived from the rates to Aberdeen. If this were so, the average of the Chicago rates to Mobridge would exceed the average of similar rates to Aberdeen by 4.35 cents instead of 14.8 cents. Or, stated in other terms, the distance from Chicago to Mobridge is 114 per cent of the distance from Chicago to Aberdeen, but the rates to Mobridge are 148 per cent of the rates to Aberdeen, and, therefore, complainant contends the rates to Mobridge, in relation to the rates to Aberdeen, are not scaled according to distance. But the Milwaukee contends that a declining rate per ton-mile as distance increases is normally only applicable where the transportation conditions for the entire haul are substantially similar, and that where the movement is from a low to

a high or to a higher rated territory, ton-mile earnings tend to increase as the distance increases. For example, an average of the class rates from Chicago to Aberdeen yields 15 mills; to Mobridge, 15.9 mills; and to Miles City, Mont., 20.7 mills per ton-mile, respectively. The validity of this contention is not unrecognized. See *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673, 690. Miles City is the same distance, 698 miles, from Minneapolis as Aberdeen is from Chicago, and yet, as indicative of the larger percentage of movement in a higher rated territory, the first-class rate from Minneapolis to Miles City is \$1.65 per 100 pounds, while the first-class rate from Chicago to Aberdeen is \$1.14 per 100 pounds.

The articles on which the commodity rates apply are rated fifth class in the western classification. The rate on fifth class from Chicago to Mobridge is 51 cents; to Aberdeen, 37 cents. The average of the commodity rates from Chicago to Mobridge is nearly 90 per cent of the fifth-class rate, and is 1.69 cents more than the average of the commodity rates on the same articles from Chicago to Mitchell, Sioux Falls, Aberdeen, Jamestown, Pierre, and Chamberlain, S. Dak., and Bismarck and Minot, N. Dak. The average of the commodity rates from Chicago to Aberdeen is 84 per cent of the fifth-class rate from Chicago to Aberdeen. While the fifth-class rate from Chicago to Aberdeen is 72.5 per cent of the fifth-class rate from Chicago to Mobridge, the average commodity rate to Aberdeen is but 67.7 per cent of the average of the commodity rates to Mobridge.

It can not be said that the proportion between the class rate and commodity rate must of necessity be the same from a common point of origin to one point as to another on the line of the same carrier. As we said in *Decker & Sons v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 547, 551:

So many elements enter into the determination of a commodity rate that it can not be said that a commodity rate must always bear a fixed relation to the corresponding class rate, even as between competing points. Furthermore, the nicely balanced proportions suggested by the complainant could be attained as logically by an increase in the commodity rates from competing points, or even by a manipulation of the class rates from those points, as by the reduction in the commodity rates from Mason City. In the absence of other evidence that a rate is unreasonable or discriminatory, the fact that a commodity rate bears a moderately greater or less proportion to a corresponding class rate is not a sufficient ground for condemning the commodity rate as unreasonable or discriminatory.

To the same effect is *Peet Bros. Mfg. Co. v. I. C. R. R. Co.*, 34 I. C. C., 634, 637.

The situation here presented is similar in principle to that considered in *Commercial Club of Mitchell, S. Dak., v. A. & W. Ry. Co.*, 46 I. C. C., 1, 14, which had to do with the adjustment of class and commodity rates as between Mitchell and Sioux Falls, both of which

points are likewise upon the lines of the Milwaukee in South Dakota, not far distant from Aberdeen and Mobridge. In the cited case we said:

The same general conditions affect the commodity rates to Mitchell as affect the class rates. Commodity rates, however, are made with greater regard for the actual volume of movement, and relative commodity rate adjustments can only be reviewed satisfactorily when the relative volume of movement of the various commodities involved is known. The record before us contains nothing of this kind, and so precludes the fixing of specific commodity rates. We incline, however, to say that no commodity rate should be maintained to Mitchell the ratio of which to the corresponding commodity rates to Sioux Falls exceeds the ratio of the corresponding class rates to Mitchell and Sioux Falls for the class in which the commodity is rated in the governing classification.

In the instant case, considering the location of Mobridge and Aberdeen, the distance from the points of origin described in the complaint, their comparative nearness to each other, the transportation conditions and traffic density, the nature of the commodities in question, and the facts as to competition, as well as all other pertinent matters of record, we conclude the difference in fifth-class rates to Aberdeen and Mobridge reasonably typifies the relationship which the commodity rates on the articles in question should bear to these respective points. To the extent that the commodity rates set out in the complaint from the above-mentioned points of origin to Mobridge are a greater proportion of the fifth-class rates from such points to Mobridge than the corresponding commodity rates are of the fifth-class rates from the same points to Aberdeen, the complainant is injuriously affected in its business and is subjected to undue and unreasonable prejudice and disadvantage.

Consideration will next be given to the outbound less-than-carload rates. At least 75 per cent, if not more, of the articles jobbed by grocery houses are rated third or fourth class, in less than carloads, under the western classification. From all these points class rates are used for the movement of the articles described in the complaint to points of sale and consumption in less-than-carload lots.

Mobridge and Aberdeen, so far as the destinations comprised in the complaint are concerned, job in the same territory—from Haynes, N. Dak., 115 miles from Mobridge, to Miles City, Mont., about 302 miles from Mobridge. Both cities also ship to points in North Dakota on the New England branch of the defendant, which runs from McLaughlin, S. Dak., to New England, N. Dak. Selfridge, the first station in North Dakota, is about 47 miles from Mobridge; New England is 163 miles from Mobridge.

Until April 6, 1911, the rates from Mobridge to points in North Dakota and Montana were the same as the Aberdeen class rates, but on that date Mobridge was eliminated from the tariff providing specific rates from Aberdeen and distance class rates were applied,

subject to the application of an intermediate provision that the rates from Mobridge should not exceed the rates from Aberdeen to the same points. Complainant computes the average third and fourth class rates from Mobridge to all stations on the line of the defendant in North Dakota and Montana as far west as Miles City, as third, 62.6, and fourth, 50.9 cents; from Aberdeen, as third, 69.4, and fourth, 53.1 cents.

To show that the class rates from Mobridge are too high and that the class rates from Aberdeen are not too low, complainant submits six class-rate scales. The first, commonly known as the Clark scale, is that prescribed in *The Missouri River-Nebraska Cases*, 40 I. C. C., 201; second, the class scale applicable in South Dakota on traffic originating east of the Missouri River destined to points west of the river, and also locally west of the river; third, the class scale applicable locally in North Dakota and also between North Dakota, South Dakota, and Minnesota; fourth, the Montana general scale applicable locally in Montana and also on traffic from points on the Great Northern and Northern Pacific railways east of Montana; fifth, the Montana distributing or jobbing scale; and, sixth, the scale prescribed by the Commission in *Minneapolis Civic & Commerce Asso. v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 663. Practically all that these scales show, considered merely as scales and not necessarily as live rates, is that the rates from Mobridge for distances from 20 to 300 miles average 44.24 cents, while the rates from Aberdeen for the same distances average 32.73 cents. The average of the rates from Aberdeen is about 6 cents more than the average of the Clark scale and the North Dakota scale for the same distances about the same as a similar average of the rates under the Montana jobbing scale and about 3 cents less than the scale applicable in South Dakota, west of the Missouri River, and in Montana locally. However, we can not from these scales find that Mobridge is subjected to undue prejudice.

The following table shows representative points of destination, distances, and third and fourth class rates:

From—	To—	Dis- tances.	Class 3.	Class 4.
		<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Mobridge.....	Haynes, N. Dak.....	115	46	40
Aberdeen.....	do.....	213	57	43
Mobridge.....	Bucyrus, N. Dak.....	131	52	44
Aberdeen.....	do.....	229	60	45
Mobridge.....	Gascoyne, N. Dak.....	146	56	45
Aberdeen.....	do.....	244	62	45
Mobridge.....	Rhame, N. Dak.....	176	64	49
Aberdeen.....	do.....	274	67	49
Mobridge.....	Marmarth, N. Dak.....	190	67	51
Aberdeen.....	do.....	288	69	51
Mobridge.....	Kingmont, Mont.....	205	71	56
Aberdeen.....	do.....	303	73	56
Mobridge.....	Plevna, Mont.....	223	76	61
Aberdeen.....	do.....	321	76	61

For all these distances the advantage on outbound rates, third class, is with Mobridge and also with it on fourth class for 115 and 131 miles. To other stations distant 162, 239, 254, 276, 288, and 300 miles from Mobridge, and 98 miles more in each instance from Aberdeen, the third and fourth class rates are the same. Although Mobridge is east of the Missouri River, the shipments under consideration are made to points westward, in territory where, from this record, we find a somewhat higher basis of class rates may well be applied, mile for mile, than is maintained from Aberdeen.

In addition to the transportation of groceries from Mobridge the third and fourth class rates are also used by the Consumers Lumber Company of Mobridge in distributing wall board, roofing and building paper, sash, doors, and kindred commodities in the consuming territory specified. The lumber originates in the west of Mobridge; paper is received from Chicago. The principal competition is from a paper company and lumber companies located at Aberdeen.

The only specific testimony of prejudice in distributing from Mobridge was in reference to a shipment of canned goods from Mobridge to Bowman, N. Dak., to which the applicable fourth-class rate from Aberdeen and Mobridge is the same. However, the distance tariff rate, which is higher, was charged. A witness for complainant stated that the tariff was obscure and there was great difficulty in having the legal rate applied.

Sioux Falls, S. Dak., and Sioux City, Iowa, job groceries in substantial volume in the same territory as Mobridge and Aberdeen and although the rates from Chicago to Sioux Falls and Sioux City are depressed by influences, *Commercial Club of Mitchell, S. Dak., v. A. & W. Ry. Co., supra*, not obtaining at Mobridge, the complainant can deliver its wares to the competitive territory on lower bases than Sioux Falls or Sioux City.

The disadvantage and prejudice said to be suffered by complainant with respect to the less-than-carload rates westward from Mobridge, are not shown to be unreasonable or undue.

The rates and relationships shown in this report as maintained by the Milwaukee were followed by the Director General of Railroads after federal control was assumed, until and including June 24, 1918. Since June 25, 1918, the relationship of these commodity and class rates has been but slightly changed by reason of the increase in the rates brought about by General Order No. 28 of the Director General of Railroads. The average of the present commodity rates from Chicago to Mobridge is 56.95 cents, while the average of the commodity rates to Aberdeen is 38.7 cents. The present fifth-class rate to Mobridge from Chicago is 64 cents and that to Aberdeen 46.5 cents. While the class and commodity rates to Aberdeen and

Mobridge have all been increased in amount, the relationships between them continue almost precisely as shown earlier in this report to have subsisted down to June 25, 1918. As above indicated, all of the commodities covered by the complaint are rated fifth class in the governing classification. No change in any transportation circumstance, other than the increase in these rates, is shown in the record to lead us to any conclusion other than that already stated with respect to the rates maintained by the Milwaukee.

We accordingly find that the carload commodity rates on the articles named in the complaint and supplemental complaint and detailed in the appendix to this report, in force prior to June 25, 1918, and those established on that date and now maintained, from Chicago, Rock Island, Duluth, St. Paul, and points taking the same rates, to Mobridge were, are, and for the future will be unduly prejudicial to the extent that the ratio of such commodity rates to the corresponding commodity rates to Aberdeen exceeds the ratio of the corresponding fifth-class rates to Mobridge and Aberdeen. The disadvantage and prejudice alleged with respect to the less-than-carload class rates applicable westward from Mobridge, as increased under the authority of General Order No. 28, is found not to be unreasonable or undue.

There is no proof of damage by reason of the undue prejudice herein found to exist and reparation will accordingly be denied.

An appropriate order will be entered.

52 I. C. C.

## APPENDIX.

[Rates in cents per 100 pounds.]

Commodities in straight or mixed carloads.	Chicago.	Rock Island.	St. Paul.	Duluth.
Fruits, vegetables, soups, oyster oysters, catsup, and vegetables with meat ingredients, in tin cans, boxed or crated, or in glass or stone jars, boxed; also canned spaghetti, in tin cans, boxed or crated, minimum weight 36,000 pounds.....	48.8	48.8	-----	44.8
Canned meats, fish, and soups, including canned sausage, meats, in glass, corned beef hash, and canned meats with vegetable ingredients in tin cans, boxed or crated, in glass or stone jars, boxed, minimum weight 36,000 pounds.....	48.8	48.8	-----	44.8
Cider, including cider sirup; also vinegar, in mixed carloads with cider, minimum weight 30,000 pounds..	47.8	47.8	-----	42.8
Condensed or evaporated milk, liquid, also condensed or evaporated milk containing vegetable fats, in glass, boxed, or in tin cans, boxed, crated, or jacketed, or in barrels, minimum weight 36,000 pounds.....	48.8	48.8	-----	44.8
Glucose, glucose jelly, molasses, sorghum, cane sirup, maple sirup substitutes, corn sugar, grape sugar, corn sirup, maple sirup, sugar sirup, sorghum sirup, rock candy sirup, corn sirup jelly, minimum weight 40,000 pounds.....	40.8	39.8	34.8	36.8
Paper, not printed (except as noted) viz: Blotting, <sup>1</sup> Cardboard, <sup>1</sup> document, <sup>2</sup> manila, news print, <sup>2</sup> printing, <sup>1</sup> wrapping, <sup>2</sup> including glassine; grease-proof, rag, oiled manila, straw manila, waxed manila or paraffined manila (exclusive of other oiled, waxed, or paraffined wrapping paper; also exclusive of rosin glazed or vegetable parchment wrapping), manila rope, <sup>2</sup> paper bags (printed or unprinted), <sup>2</sup> poster, <sup>2</sup> strawboard or wood-pulp board, <sup>2</sup> boxes or cartons (printed or paraffined), knocked down flat; fiber board (printed or not printed), <sup>2</sup> strawboard <sup>2</sup> or pulpboard boxes or cartons (plain), knocked down flat; wood-pulp board; <sup>2</sup> tahors' pattern, <sup>2</sup> tissue (plain), <sup>2</sup> toilet, <sup>2</sup> minimum weight 36,000 pounds.....	43.8	43.8	37.8	39.8
Pickles (kraut, cucumber, tomato, cauliflower, and onion) and vinegar, in tin cans boxed or crated, in glass or stone, boxed, or in barrels, kegs, kits, pails, or tubs, table sauces, including catsup, horseradish, prepared mustard, prepared pepper sauce and salad dressing, in glass, boxed, in tin cans, boxed or crated, or in bulk in barrels, straight or mixed carloads, minimum weight 36,000 pounds.....	48.8	48.8	-----	44.8
Will not apply on vinegar, in straight carloads.				
Soap, boxed; soft soap, in barrels; liquid soap, in tin cans, boxed or in barrels; soap powder, washing powder, washing soda (powdered), washing and scouring compounds (exclusive of bluing), and monohydrate of soda and sesqui-carbonate of soda, straight or mixed carloads, also borax, in mixed carloads with the foregoing articles, minimum weight 36,000 pounds.	47.8	47.8	-----	43.8
Starch, minimum weight 36,000 pounds.....	40.8	39.8	34.8	36.8
Sugar, except maple, minimum weight 36,000 pounds..	47.8	47.8	-----	43.8
Vinegar, minimum weight 30,000 pounds.....	43.8	43.8	37.8	39.8

<sup>1</sup> Declared valuation not exceeding 5 cents per pound and so stated on shipping ticket or bill of lading (when valuation is not so declared, rates not based on valuation will apply).

<sup>2</sup> Shipments referenced thus <sup>2</sup> in mixed carloads with blotting paper, cardboard, and printing paper, will be subject to declared valuation not exceeding 5 cents per pound, and stated on shipping ticket or bill of lading (when valuation is not so declared, rates not based on valuation will apply).

52 I. C. C.

No. 10035.<sup>1</sup>  
FARMERS FEED COMPANY  
v.  
ERIE RAILROAD COMPANY ET AL.

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*Submitted June 12 1918. Decided February 26, 1919.*

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Discontinuance of an allowance for reduction in weight due to leakage and evaporation of moisture from brewers' wet grain in transit, found justified. Complaint dismissed.

*Harold S. Shertz and Edward C. Taylor* for complainants.

*Henry Wolf Bicklé* for Pennsylvania Railroad Company; *William L. Kinter* for Philadelphia & Reading Railway Company; *Henry Adams* for Erie Railroad Company; *E. M. Snyder* for Central Railroad Company of New Jersey; and *Edward S. Giles* for Delaware, Lackawanna & Western Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

The complainants allege that the charges on shipments of brewers' wet grain from New York and Brooklyn, N. Y., Jersey City and Newark, N. J., and Philadelphia, Pa., to points in New Jersey in the vicinity of those cities, based on origin weights, are unreasonable and unduly prejudicial in that no allowance is made for loss of weight in transit due to leakage and evaporation of moisture. They ask that the defendants be required to restore the former tariff rule, which provided for a deduction of 8 per cent from the origin weights.

The weight allowance of 8 per cent was canceled in April, 1917, after having been in effect from New York, Brooklyn, Newark, and Jersey City for a number of years, and from Philadelphia since October and November, 1915. Its application generally extended only to destinations within about 100 miles of New York and Philadelphia.

Brewers' wet grain is a by-product of barley and other ingredients used in the manufacture of beers; and is sold as feed for dairy cattle. It contains from 75 to 90 per cent moisture when shipped. The percentage of weight lost by evaporation and leakage in transit

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<sup>1</sup> This complaint also embraces No. 10036, Penn Grains & Feed Company v. Pennsylvania Railroad Company et al.



varies considerably, according to time in transit and conditions of weather. An exhibit filed by the complainants indicates variations in loss of weight ranging from 6 to 23 per cent, and averaging between 10 and 12 per cent. After the amount of moisture is reduced to about 68 or 70 per cent, which occurs mostly in the first three days, the evaporation and leakage almost entirely cease. Deterioration is said to set in about the sixth day after loading. The reduction in moisture is not accompanied by shrinkage in bulk. Wet grain is shipped in box cars usually, and is valued at from \$10 to \$11 per ton. The complainants refer to the fact that allowances are made by the defendants for ice shipped with fish in packages and with beer, and salt with green hides. It is observed for the defendants that these allowances are made for ice and salt only when employed to preserve other commodities in transit, and are not made on straight carload shipments of salt or ice; whereas, they contend, the moisture in wet grains is an essential ingredient of the commodity itself.

Washed coal is the only commodity cited for which we have approved an allowance in weight for loss of moisture. In *Weighing of Freight by Carrier*, 28 I. C. C., 7, 25, we said that where coal is washed in preparing it for shipment and the moisture does not become a part of the coal itself but soon evaporates there would seem to be strong reason why a proper deduction should be made from the weight ascertained at the mine; but that where the moisture is a part of the coal itself even though it subsequently evaporates, the carrier may properly require that the weight at the mine shall govern.

There is nothing of record to show that the reduction in freight charges on account of the former allowance was considered in connection with the establishment of the rates on this traffic from the New York and New Jersey points to the territory in question. On the other hand, it is shown that the former allowance had only a limited application and that when it was established from Philadelphia no change was made in the rate.

We find that the defendants have justified the cancellation of the allowance in question, and an order dismissing the complaint will be entered.

52 I. C. C.

No. 10050.

## TUCKERTON RAILROAD COMPANY

v.

## PENNSYLVANIA RAILROAD COMPANY.

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*Submitted June 12, 1918. Decided February 26, 1919.*

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Upon complaint that the charges assessed on a carload of coal billed from Cortex No. 2 Mine, Pa., to Barnegat, N. J., there held by the carrier, the consignee, for 24 hours and then forwarded as company material via its own line to Tuckerton, N. J., over an intrastate route, were illegal to the extent that they exceeded those that would have accrued at the rate to Barnegat: *Held*, That under the facts of this case the complainant was entitled to ship the coal to itself at Barnegat under the joint rate applying to that point, and to distribute it from Barnegat to points on its line as company material; and that the charges assessed were illegal in so far as they exceeded those that would have accrued under the joint rate to Barnegat.

*Henry S. Drinker, jr.*, for complainant.

*Henry Wolf Bikelé* for defendant.

## REPORT OF THE COMMISSION.

## DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

The charges assessed on a carload of coal shipped September 13, 1917, from Cortex No. 2 Mine, in the Clearfield region of Pennsylvania, to Barnegat, N. J., and forwarded to Tuckerton, N. J., are assailed herein as illegal, and reparation is asked. Rates are stated in amounts per long ton.

The shipment weighed 80,100 pounds and moved over the Pennsylvania Railroad to Whitings, N. J., and the Tuckerton Railroad to Barnegat, as waybilled. No bill of lading was issued. At Barnegat the car was taken out of the train and placed on a siding. On the following day it was moved by the Tuckerton Railroad over an intrastate route to Tuckerton, billed free as company material, and was there unloaded. The distances from Whitings to Barnegat and Tuckerton are 17 and 29 miles, respectively. The charges shown on the original waybill were \$80.46, based on a joint commodity rate of \$2.25, in effect to Barnegat. Subsequently the Pennsylvania Railroad issued a corrected waybill showing the destination as Tuckerton and assessing charges in the sum of \$94.76, at a rate of \$2.65, in effect to that point. The complainant remitted to the initial line the corrected

52 L. C. C.

charges, less 55 cents per ton, its division out of the rates to both Barnegat and Tuckerton.

The coal was bought by the complainant f. o. b. the mine. At the time of the purchase it was complainant's intention to unload the coal at Tuckerton, where its only coal bin is located and where its engines are usually coaled. The car was taken out of the train at Barnegat merely as a token of delivery to and assumption of possession by the complainant as consignee, and this course is uniformly followed in order that the complainant may avail itself of the lowest net transportation charge, namely, the rate to Barnegat less its division. The complainant contends that the rate to Barnegat was legally applicable and that the transportation in interstate commerce was completed at that point.

Both parties desire a determination of this case as the basis for their future practice. The defendant is not only willing to make refund on the basis of the rate to Barnegat, but contends, with complainant, that the carrier as a shipper is entitled to ship its own coal to an intermediate point, there take delivery, and then reship it to a new destination for the purpose of securing a lower charge than would result from the application of the joint rate to the ultimate destination, relying on *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S., 403; *C., M. & St. P. Ry. Co. v. Iowa*, 233 U. S., 334; *Lehigh Valley R. R. v. Barlow*, 244 U. S., 183; and *Settle v. B. & O. S. W. R. R. Co.*, 249 Fed., 913. It is urged for the defendant that the test for determining whether the interstate character of the transportation service was completed at Barnegat is whether there was a completion of the first contract of transportation by the delivery of the property to the consignee at the first destination, the delivery being consummated when the control of the property was relinquished by the carrier and assumed by the owner. Also that the intention of the owner to dispose of its property at another point should play no part in determining the character of the transportation service to the first point, because the carriers are unable to look into a shipper's mind and ascertain his intention.

Counsel expressed the hope that in deciding this case we may express principles applicable alike to movement of company material and commercial shipments, by which carriers may be guided. Only company material is in issue, and we confine our decision to that issue.

Numerous questions as to transportation of company material have from time to time been passed upon by us in conference rulings and in reports on investigations. As the result of decisions by us and by the courts, many unlawful practices connected therewith followed in former years have been discontinued. In November, 1908,

52 I. C. C.

*Conference Ruling 225*, we expressed the opinion that a carrier as a shipper over the lines of another carrier may not be given any preference in the application of rates on interstate shipments, but that it may lawfully and properly take advantage of legal tariff joint rates applying to a convenient junction or other point on its own line, provided shipments are consigned through to such point from point of origin and are in good faith sent to such billed destination.

It was later held, *Conference Ruling 324*, that it is unlawful for carriers to make special and discriminatory divisions of joint rates upon railroad fuel as between an originating or participating carrier and a purchasing carrier; that in the division of joint rates a shipping railroad must be treated precisely as any other shipper is treated; and that divisions upon fuel coal must be made in good faith without respect to the fact that one of the carriers is the purchaser of the coal.

These holdings and the principles upon which they rest have been adhered to through all of the various proceedings in which new angles of the question have been presented and considered. We think that those principles are more in point in the instant case than is discussion of expressions of the courts in cases which presented only controversies between commercial shippers and carriers, or where the primary question was one of jurisdiction, federal or state. The question here is inseparably connected with the fact that this is company fuel purchased by one of the carriers participating in its transportation.

The facts in *Rates on Railroad Fuel and other Coal*, 36 I. C. C., 1, differed from those here considered in that there it abundantly appeared that the purchasing carriers were given abnormally and unreasonably high divisions of joint rates to points arbitrarily selected for that purpose and in that there was a practically complete identity of interests between the originating carrier and the producer and vendor of the coal.

In the instant case there is no suggestion that the purchase price of the coal is affected in the least by the manner in which it is billed or moved or that defendant is interested in the production or price of the coal. The divisions of the joint rates between the complainant and the defendant apparently are on an unusual basis. The haul of the defendant to Whiting is the same whether the shipment terminates at Barnegat or at Tuckerton. The haul of the complainant is longer to Tuckerton than to Barnegat. The rate to Tuckerton is higher than that to Barnegat; but the division of the complainant is the same on shipments to both destinations, while that of the defendant is higher under the rate to Tuckerton than under that to Barnegat. It does not appear that these divisions have been fixed

for the purpose of giving the purchasing carrier an undue or improper advantage. On the contrary, they would seem rather to operate to its disadvantage. We are not to be understood as approving this unusual basis.

Holding the car at Barnegat, as was done, would avail nothing if the transportation transaction in its substance and effect was unlawful. It is true that the carrier can not always ascertain the intention that is in the shipper's mind, but where it is apparent from the surrounding circumstances and the manner in which the shipment is handled that the transaction is not in good faith, the Commission will look to what is actually done and the necessary effect thereof, irrespective of incidents of billing or of transparent devices intended to defeat the law.

Upon the facts presented in this record we find that complainant may lawfully avail itself of the joint rates to Barnegat, provided the shipments are in good faith billed to and hauled to Barnegat, and may thereafter distribute its fuel coal from Barnegat to other points on its line as company material. *In the Matter of Restricted Rates*, 20 I. C. C., 426, 431.

The "ceremony," as counsel termed it, of setting out the car for 24 hours at Barnegat was performed as an overt act of delivery in order to indicate that there the service by complainant as common carrier ended, and that the movement thence to Tuckerton would be made by it as owner handling its own material. The law does not require a vain thing. Delivery in this case would have been indicated as effectually by proper notation on the waybill that the movement beyond Barnegat was to be deadhead as company fuel leaving Barnegat as the billed destination at which the service of common carriage ended and to which the joint rate applied. In this way the useless delay and expense of cutting out and switching the car at Barnegat would have been obviated, and open record made at the time of what was done.

The charges assessed upon the shipment here complained of were illegal in so far as they exceeded those that would have accrued under the joint rate to Barnegat.

No order is necessary.

52 I. C. C.

No. 10089.

DUCKWORTH COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

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*Submitted September 23, 1918. Decided February 26, 1919.*

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Rate collected and legally applicable on compressed cotton from New Orleans, La., to Seattle, Wash., for export, found to have been unreasonable. Reparation awarded.

*Hall, Monroe & Lemann and Walter J. Suthon, jr., for complainant.*

*C. A. Starg for Illinois Central Railroad Company.*

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

By DIVISION 3:

The complainant, a corporation dealing in cotton at New Orleans, La., alleges by complaint seasonably filed as amended, that the charges collected on two shipments of compressed cotton from New Orleans to Seattle, Wash., for export to Vladivostok, Siberia, were illegal and unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments, consisting of 1,377 bales of compressed cotton, weighed 730,409 pounds. They moved from New Orleans March 13 and 17, 1916, over the Illinois Central Railroad to Albert Lea, Minn., Minneapolis & St. Louis Railroad to Minnesota Transfer, Minn., and Great Northern Railway to Seattle, with the exception of one carload of 58 bales which moved beyond Minnesota Transfer over the Northern Pacific Railway. Charges were collected at a joint commodity rate of 95 cents. The complainant contends that inasmuch as this cotton was compressed when delivered to defendants for transportation, the legally applicable rate under note A to the item publishing the commodity rate was 85 cents, and that in any event the failure to make this reduction in the rate on account of the cotton being compressed rendered the rate charged unreasonable. This note reads, "Rate named includes charge of 10 cents per 100 pounds for compressing." Effective September 1, 1916, a rate of 85 cents was established, applicable on cotton compressed before delivery for shipment. It was stated for the defendant that

this was done to make clear the application of the rates. It was admitted on behalf of the Illinois Central, the only defendant represented at the hearing, that the rate charged was unreasonable and a willingness was expressed to make reparation.

While it appears to have been the intention of the framers of the tariff naming the 95-cent rate to make an allowance of 10 cents per 100 pounds on cotton delivered for transportation compressed, this could not be lawfully done under the tariffs in effect at the time these shipments moved.

We find that the rate charged was legally applicable, but that it was unreasonable to the extent that it exceeded 85 cents per 100 pounds; that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$730.41, with interest.

An order awarding reparation will be entered.

52 I. C. C.

No. 10095.

## NATIONAL STEEL RAIL COMPANY

v.

## ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY ET AL.

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*Submitted October 24, 1918. Decided February 26, 1919.*

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Rate on old rails and fastenings from New Madrid, Mo., to Madison, Ill., found to have been unreasonable. Reparation awarded.

*Philip G. Safford* for complainant.

*Arthur E. Haid* for defendant railroads.

*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

## DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

The complainant is I. H. Cohn, a dealer in rails at St. Louis, Mo., under the name of National Steel Rail Company. By complaint filed March 20, 1918, as amended, he alleges that an unreasonable rate was charged on nine carloads of old rails, spikes, fastenings, and splices or bars, shipped in July and August, 1917, from New Madrid, Mo., to Madison, Ill., and prays for reparation on the basis of the subsequently established rate of \$2 per ton. Except when otherwise indicated, the per-ton rates hereinafter referred to apply per long ton on rails and per net ton on the other articles shipped.

The shipments moved over the St. Louis & Missouri Southern Railway to Marston, Mo., a distance of 8 miles, thence over the St. Louis-San Francisco Railway, hereinafter termed the Frisco, to St. Louis, Mo., approximately 200 miles, and were delivered at Madison by the Terminal Railroad Association of St. Louis. Charges were collected at the applicable fifth-class rate of 31 cents per 100 pounds, governed by the western classification. Effective February 22, 1918, the defendants established a commodity rate of \$2 per ton from and to these points.

The complainant relies chiefly upon the subsequently established rate and a like rate applicable when the shipments moved by way of the St. Louis Southwestern Railway to East St. Louis, Ill., 224 miles, and via the line of the Terminal Railroad Association from that point to Madison. He shows that during the period of movement the defendants maintained the same rates on the classes and



some commodities from New Madrid to St. Louis as applied over the St. Louis Southwestern; and cites rates on rails of 10 cents per 100 pounds from St. Louis to Kansas City, Mo., \$1.68 per ton from St. Louis to Chicago, Ill., 11 cents per 100 pounds from St. Louis to Springfield, Mo., \$1.05 per ton from Cairo and Thebes, Ill., to St. Louis, and \$1.55 per ton from Thebes to New Madrid; also certain Arkansas distance rates which are not comparable to the rate assailed.

During the period in question commodity rates applied on rails and fastenings from St. Louis to stations on the Frisco in southeastern Missouri, including rates of \$2 per ton to points north of Ringley, Mo., the second station north of Marston, and \$3 per ton to Ringley and points south thereof and north of the Arkansas state line. The Frisco intended to apply these rates northbound also and the tariff was later amended accordingly.

For the defendants it was admitted that the rate charged was unreasonable, but it was insisted that the complainant was not entitled to a rate lower than \$3 per ton, which rate applied at the time of movement from St. Louis to Marston and near-by main-line points on the Frisco, and which, save for an error in tariff publication, would also have applied in the opposite direction. Attention is called to the one-line haul of the St. Louis Southwestern from New Madrid to St. Louis, and the statement made that carrier competition has compelled the defendants to meet certain of the rates of that carrier.

We find that the rate assailed was unreasonable to the extent that it exceeded \$2 per long ton on the rails and \$2 per net ton on the other articles shipped. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that he is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date upon which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

52 I. C. C.

No. 10198.  
F. H. DOYLE  
v.  
LOUISIANA & NORTH WEST RAILROAD COMPANY  
ET AL.

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*Submitted July 18, 1918. Decided February 26, 1919.*

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Two carloads of oak lumber from Homer, La., to New York, N. Y., found to have been misrouted by the initial carrier. Reparation awarded.

*William S. Phippen* for complainant.

*R. W. Barrett* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

The complainant is engaged in the lumber business at New York, N. Y. By complaint seasonably filed he alleges that unreasonable charges were collected by the defendants on two carloads of oak lumber shipped from Homer, La., to New York in February and March, 1916. Reparation is asked. Rates are stated in cents per 100 pounds.

The first shipment consisted of 45,400 pounds of oak lumber on which charges of \$198.85 were collected. The bill of lading bore routing notation, "Q. & C. to Cinti." The other shipment weighed 61,400 pounds, on which \$268.92 was collected. The routing shown was, "via Star Union Line, Penn. R. R. dely." Both shipments moved in accordance with routing instructions through Cincinnati, Ohio, at a rate of 43.8 cents, composed of rates of 23.5 cents from Homer to Cincinnati and 20.3 cents beyond. Each bill of lading specified a rate of 35 cents to apply on the lumber. No such through rate applied by way of Cincinnati, but did apply through Bristol, Tenn., or Potomac Yard, Va.

The complainant contends that, inasmuch as the rate of 35 cents did not apply over the routes specified, the defendants should have complied with our *Conference Ruling No. 474-c* which reads, in part, as follows:

The obligation lawfully rests upon the carrier's agent to refrain from executing a bill of lading which contains provisions that can not lawfully be complied with or provisions which are contradictory, and therefore impossible of execution. When, therefore, the rate and the route are both given by the ship-

52 I. O. O.

per in the shipping instructions and the rate given does not apply via the route designated, it is the duty of the carrier's agent to ascertain from the shipper whether the rate or the route given in the shipping instructions shall be followed. The carrier will be held responsible for any damages which may result from the failure of its agents to follow this course.

The record contains no evidence that any effort was made by the initial carrier, the Louisiana & North West Railroad Company, to ascertain the desire of the shipper regarding the movement of the cars and that carrier is therefore responsible for the misrouting and resulting damage.

We find that the Louisiana & North West Railroad Company misrouted the shipments; that the complainant paid and bore the charges thereon and was damaged by the misrouting to the extent of the difference between the charges applicable over the route of movement and those that would have accrued at the rate of 35 cents per 100 pounds; and that he is entitled to reparation from the Louisiana & North West Railroad Company in the sum of \$93.97, with interest. An appropriate order will be entered.

52 I. C. C.

No. 10131.

CENTRAL PENNSYLVANIA LUMBER COMPANY

v.

BUFFALO & SUSQUEHANNA RAILROAD CORPORATION  
ET AL.

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*Submitted July 24, 1918. Decided February 26, 1919.*

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Shipments of lumber from Costello, Pa., to Curriers, N. Y., found to have been misrouted by the initial carrier. Reparation awarded.

*J. F. Sisley* for complainant.

*E. H. Burgess* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the lumber business at Williamsport, Pa. By complaint filed March 27, 1918, it alleges that the rate of 14.5 cents per 100 pounds charged on two carloads of lumber shipped from Costello, Pa., to Curriers, N. Y., September 3 and 11, 1917, was unreasonable to the extent that it exceeded \$2.64 per net ton. Reparation is asked.

The shipments, aggregating 126,400 pounds, moved over the line of the Buffalo & Susquehanna Railroad Corporation to Wellsville, N. Y., Erie Railroad to Attica, N. Y., and the Buffalo, Attica & Arcade Railroad, now known as the Arcade & Attica Railroad Corporation, to Curriers. Charges were collected in the sum of \$183.28 at the applicable joint sixth-class rate of 14.5 cents per 100 pounds. Contemporaneously a combination rate of \$2.64 per net ton applied by way of the Buffalo & Susquehanna to Keating Summit, Pa., Pennsylvania Railroad to Arcade, N. Y., and Arcade & Attica beyond, composed of rates of 74 cents per net ton to Keating Summit, and \$1.90 per net ton beyond. The distance from Costello to Curriers is 181 miles by the route of movement, and 89 miles by the Keating Summit route. The shipments were routed, "B. A. & A.," but no rate was inserted in the bills of lading. The complainant was entitled to have its shipments move over the cheapest route consistent with its instructions, which was by way of Keating Summit. No evidence was offered to show that the rate over the route of movement was unreasonable.

52 I. C. C.

We find that the shipments were misrouted by the Buffalo & Susquehanna Railroad Corporation; that the complainant paid and bore the charges thereon in so far as they exceeded those that would have accrued at the rate of \$2.64 per net ton; and that it has been damaged and is entitled to reparation from the Buffalo & Susquehanna Railroad Corporation in the sum of \$16.43, with interest.

An appropriate order will be entered.

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No. 10152.

WISCONSIN GRANITE COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY  
ET AL.

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*Submitted July 15, 1918. Decided February 26, 1919.*

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Shipments of granite paving blocks, in carloads, from Red Granite, Wis., to Kansas City, Mo., not shown to have been misrouted. Complaint dismissed.

*Donald A. Callahan* for complainant.

*Robert H. Widdicombe* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

Complainant alleges that, due to misrouting, unreasonable charges were collected on 20 carloads of granite paving blocks shipped from Red Granite, Wis., to Kansas City, Mo., between April 17 and April 27, 1917, inclusive. Reparation is asked.

The shipments were delivered to the Chicago & North Western Railway at Red Granite and moved from that point to Kansas City, as routed by the complainant, over the Chicago & North Western, the Elgin, Joliet & Eastern, the Chicago & Eastern Illinois, and the St. Louis-San Francisco railways. Charges were collected at the applicable combination rate of 24.5 cents per 100 pounds, composed of class E rates of 13.5 cents to St. Louis, Mo., and 11 cents beyond. No rate was inserted in the bill of lading.

The complainant shows that when the shipments moved a rate of 10 cents per 100 pounds applied from Red Granite to Kansas City over the Chicago & North Western, the Elgin, Joliet & Eastern, and the Chicago & Alton railways, and insists that it would have routed the shipments over the latter route but for the fact that the agent

of the initial line at Red Granite failed to advise it that this rate did not apply over the route of movement.

As the shipments moved in accordance with the routing instructions of complainant, it is clear that they were not misrouted. It has uniformly been held that both carrier and shipper are presumed to know the lawful rate and that not even a misquotation of the rate applicable affords, of itself, ground for authorizing a departure from the lawful rate. *Poor Grain Co. v. C., B. & Q. Ry. Co.*, 12 I. C. C., 418, 469; *Louis. & Nash. R. R. v. Maxwell*, 237 U. S., 94. An order will be entered dismissing the complaint.

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No. 8481.

SMITH-CONNOR HAY & GRAIN COMPANY

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

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PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 703,  
1561, AND 2060.

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*Submitted November 17, 1916. Decided March 3, 1919.*

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Rate on a carload of hay from Breckenridge, Mich., to Charleston, S. C., not shown to have been unreasonable. Shipment found to have been overcharged and reparation awarded.

*W. J. Connor* for complainants.

*William Henderson* for Pere Marquette Railroad Company.

*H. H. Preston* for Atlantic Coast Line Railroad Company.

#### REPORT OF THE COMMISSION.

#### BY THE COMMISSION:

Complainants are W. J. Connor and Arthur H. Smith, copartners, dealing in hay at Saginaw, Mich. By complaint, filed November 26, 1915, they allege that the rate of 48 cents per 100 pounds charged by defendants for the transportation of a carload of hay from Breckenridge, Mich., to Charleston, S. C., was unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment, weighing 22,803 pounds, was consigned to complainants at Florence, S. C., order notify J. F. Stackley Company, 52 I. C. C.

and moved March 20, 1914, over the Pere Marquette Railroad to East Toledo, Ohio; Toledo & Ohio Central Railway to Bannock, Ohio; Norfolk & Western Railway to Petersburg, Va.; and Atlantic Coast Line Railroad to Florence. At Florence the shipment was refused by the Stackley Company and, after being held 11 days, was re-consigned by complainants to Charleston to which point it was moved by the Atlantic Coast Line, no out of line haul being involved. No joint through rate applied either to Florence or Charleston. The rate applicable on through shipments of hay, in carloads, over the route of movement from Breckenridge to Charleston was 43 cents, composed of the fifth-class rate of 26 cents, governed by the official classification, to Petersburg, and the class D rate of 17 cents, governed by the southern classification, beyond. The rate to Florence was 48 cents, composed of the 26-cent rate to Petersburg and the class D rate of 22 cents beyond. The tariff of defendant Atlantic Coast Line, in effect at the time of movement, provided as follows:

Where reconsignment is made after arrival at the first destination and the rate to the new destination is lower than the rate to the first destination, the rate to the first destination will be charged.

Freight charges were collected in the sum of \$111.73. Under the rule quoted the rate applicable for the through transportation from Breckenridge to Charleston was 48 cents. The correct freight charges were \$109.45, so that the shipment was overcharged \$2.28. Demurrage charges amounting to \$11 assessed at Florence are not in issue.

Complainants contend that the rate to Florence was unreasonable, and therefore that the through rate charged to Charleston, under the rule quoted, was likewise unreasonable. In support of this contention they rely solely upon the fact that the rate to Florence was higher than the rate on through shipments to Charleston, a farther distant point. The mere fact that the rate to an intermediate point is higher than the rate to a more distant point does not establish the unreasonableness of the rate to the former.

The carriers participating in this movement contracted to handle the shipments from Breckenridge to Florence at the published rate of 48 cents. That rate is not shown to have been unreasonable, and it would be unfair to require the defendants to bear the additional expense and risk incident to reconsignment and to the further haul beyond the original destination at a rate lower than the rate applicable to the transportation first demanded. *Great Western Sugar Co. v. Y. & M. V. R. R. Co.*, 34 I. C. C., 45.

We find that the rate of 48 cents per 100 pounds legally applicable on the shipment in issue is not shown to have been unreasonable, but that the charges collected were illegal to the extent that

they exceeded the charges that would have accrued at the rate of 48 cents per 100 pounds, legally applicable. We further find that the complainants made the shipment as described and paid and bore the charges thereon herein found to have been illegal; that they were damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate legally applicable; and that they are entitled to reparation in the sum of \$2.28, with interest.

Those portions of Fourth Section Applications Nos. 703 of the Atlantic Coast Line Railroad, No. 1561 of the Norfolk & Western Railway, and No. 2060 of J. F. Tucker, agent, in which authority is sought to continue rates on hay, in carloads, from Breckenridge to Charleston lower than the rates contemporaneously maintained on like traffic to Florence and other intermediate points were heard with the complaint. The higher rate to Florence results from the fact that the Petersburg-Florence component of the through rate from Breckenridge to Florence is higher than the Petersburg-Charleston component of the through rate from Breckenridge to Charleston. It appears that rates generally from Virginia cities to Charleston are lower than the rates to Florence and other intermediate points. Other markets and carriers are vitally interested in this adjustment, and the fourth section issue presented is too broad to be determined upon the meager record in this case. We accordingly make no finding relative to the fourth section applications, leaving the question which they present to be determined on a more comprehensive record.

An appropriate order will be entered.

52 L. C. C.



No. 9846.  
CALIFORNIA WHOLESALE POTATO DEALERS  
ASSOCIATION  
v.  
ARIZONA EASTERN RAILROAD COMPANY ET AL.

*Submitted January 8, 1918. Decided February 26, 1919.*

Defendants' withdrawal of allowance for free transportation of material used in installing an extra deck in cars in connection with shipments of potatoes and onions found justified. Complaint dismissed.

*O. W. De Journette and Samuel A. Pleasants* for complainant.  
*E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company.  
*Elmer Westlake* for Sunset Central lines.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

It is here alleged that the defendants' failure to make an allowance for the weight of lumber used in double decking cars, in connection with shipments of potatoes and onions, resulted in the collection of unreasonable charges on shipments from certain points in Oregon, California, and Nevada to points in California, Arizona, New Mexico, Colorado, Texas, Kansas, Oklahoma, Missouri, and Illinois. The rates are not attacked.

New potatoes and onions are shipped from this originating territory, in bags, principally in refrigerator cars but not under refrigeration. Because of the tendency of these commodities to decay and spoil if not properly ventilated, it has been the practice of shippers to double deck the cars in order to secure a proper circulation of air. The extra deck is placed about 8 feet above the car floor and the material used is said to weigh from 700 to 1,000 pounds. Prior to March 11, 1915, the defendants' eastbound tariffs provided, in connection with the rates on potatoes and onions to Texas points, for the free transportation of material, not exceeding 700 pounds, used for bracing or decking. On that date and subsequent to our decision in *Dunnage Allowances*, 30 I. C. C., 538, wherein we found that the respondents had justified the cancellations from tariffs applying to points in southwestern territory, of the provision for dunnage allowances on shipments in closed cars, this provision was canceled. Effective May 27, 1915, it was provided, in connection with potato and

52 I. C. C.

onion shipments from and to the points in question, that "strips of lumber for bracing load, not exceeding 400 pounds, will be allowed free," but no allowance has since been made for decking. On October 11, 1915, the provision quoted was amended by inserting after the word "bracing" the words "does not include decking" in parentheses.

The complainant contends that double decking is necessary in order to secure proper ventilation for new potatoes and onions; that it is in the nature of a preservative to insure the shipments reaching their destination in good condition; that equipment without it is deficient; and that the full burden of the cost of installing and transporting this extra deck should not be placed upon the trade. Provisions from various tariffs were cited for complainant showing certain allowances made in connection with the shipment of different commodities; for example, ice with shipments of perishable freight; meat hooks, floor racks, and lining racks with shipments of meat and fresh fish; messengers or caretakers with fresh fruits and vegetables; dunnage with shipments of powder and high explosives; and stoves, fittings, and fuel therefor in connection with the shipment of certain commodities. In *Dunnage Allowances, supra*, which specifically considered decking as well as dunnage, we said, at pages 543 and 544:

In various ways carriers throughout the country in their tariffs provide for transportation free, or with appropriate allowance, of ice and stoves and linings with perishable freight; hay, straw, and sawdust with beer, eggs, vegetables, and fruit; salt with salt meats; and feed and attendants with live stock, poultry, and other like articles. These, however, which are mainly in the nature of measures looking to the preservation of the freight, are the outgrowth of peculiar conditions and are not to be identified with the issues now before us.

For the defendants it was asserted that the decking is in no way a proper part of the carriers' equipment, but takes the place of crating or packing; and that if potatoes and onions were shipped in crates, as are celery, cauliflower, cabbage, and miscellaneous vegetables for which a proper circulation of air is also necessary, shippers of potatoes and onions could avail themselves of the free allowance made for bracing. Also that many concessions are made to potato and onion shippers, such as the furnishing of refrigerator cars, which are much heavier than box cars, and without any rental charge; and that potatoes and onions from California points move at extremely low rates, forced by severe competition, the rate of 75 cents per 100 pounds from California points to Texas points, for distances averaging between 1,600 and 1,800 miles, being cited, among others. In *Dunnage Allowances, supra*, we said at pages 542 and 543:

Standard box, stock, ventilated, and refrigerator cars in good repair will accommodate all of the ordinary and usual needs of shippers, and if more than this is demanded because of the form, nature, or peculiar characteristics of goods tendered for conveyance some obligation must attach to the shipper in connection with the additional demand.

\* \* \* \* \*

There can be no doubt on this record that the primary and most important purpose of the dunnage [specifically stated to include double-decking] used in varying forms by the shipping interests here represented is to make the load safe for transportation and to obviate injury to the goods, the prevention of damage to the carriers' equipment or property being a minor consideration. Under these circumstances and in view of the fact that the substitution of dunnage for the more expensive boxes and crates and other packing material in respect of most of the commodities discussed is of advantage to the shipper and reduces the gross weight upon which freight charges must be paid, we think it not inconsistent that the carriers should receive revenue for the total weight hauled.

Following the case cited and upon the facts of record we find that the defendants have justified the withdrawal of the allowance for material used in double-decking, and an order dismissing the complaint will be entered.

52 I. C. C.

No. 10166.  
CHATTANOOGA RIVER BRICK COMPANY  
v.  
ALABAMA GREAT SOUTHERN RAILROAD COMPANY  
ET AL.

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*Submitted December 4, 1918. Decided February 26, 1919.*

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Rate on common brick, in carloads, from Chattanooga, Tenn., to Fort Payne, Ala., found to have been unreasonable. Reparation awarded.

*John S. Fletcher* for complainant.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

The complainant, a corporation engaged in the manufacture of brick at Chattanooga, Tenn., alleges in its complaint filed April 26, 1918, that the rate of 5 cents per 100 pounds charged by the Alabama Great Southern Railroad Company, hereinafter called the defendant, on 16 carloads of common brick, shipped from Chattanooga to Fort Payne, Ala., between August 16 and October 16, 1916, inclusive, was unreasonable and in violation of the long-and-short-haul rule of the fourth section of the act to the extent that it exceeded the rate contemporaneously maintained from Chattanooga to Birmingham, Ala. It asks reparation. By supplemental complaint filed after the hearing the Director General of Railroads was made a party defendant. No further hearing was asked or had. Rates are stated in cents per 100 pounds.

The shipments, aggregating 955,200 pounds, moved over the defendant's line, now a part of the Southern Railway system. Charges were collected in the sum of \$477.60 at the applicable commodity rate of 5 cents, minimum 30,000 pounds. An additional charge of \$2.50 per car, assessed upon 15 of the shipments for switching performed at Chattanooga by the Nashville, Chattanooga & St. Louis Railway is not assailed.

Prior to December 24, 1906, the defendant maintained a commodity rate of 3 cents, minimum 40,000 pounds, from Chattanooga to Birmingham. From that date until June 25, 1918, the rates were 4 cents to Birmingham and 3 cents to Attalla, Ala., to both of which points Fort Payne is directly intermediate. The departures

from the long-and-short-haul rule of the fourth section were protected by an appropriate application which was not heard with this complaint. On February 21, 1917, the defendant, at complainant's request, reduced the rate to Fort Payne to the Birmingham basis. On June 25, 1918, the rates to Fort Payne and Birmingham were increased to 6 cents and the rate to Attalla to 5 cents, under General Order No. 28 issued by the Director General of Railroads.

The following comparisons were submitted for the complainant:

From—	To—	Route.	Miles.	Rate.	Ton-mile earnings.
				<i>Cents.</i>	<i>Mills.</i>
Chattanooga, Tenn.....	Fort Payne, Ala.....	A. G. S.....	51	5	12.61
Do.....	do.....	A. G. S.....	51	4	15.69
Do.....	Attalla, Ala.....	A. G. S.....	87	3	6.90
Do.....	Birmingham, Ala.....	A. G. S.....	143	4	5.59
Do.....	Rome, Ga.....	A. G. S.....	77	3	7.79
Do.....	Atlanta, Ga.....	A. G. S.....	137	4	5.84
Missionary Ridge, Tenn.....	Birmingham, Ala.....	C. of Ga.....	152	4.5	5.92

<sup>1</sup> Rate charged:

<sup>2</sup> Rate established February 21, 1917.

We find that the rate assailed was unreasonable to the extent that it exceeded 4 cents per 100 pounds, minimum 40,000 pounds; that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$94.64, with interest. An order will be entered accordingly.

52 I. C. C.

No. 9916.  
STIELOW BROTHERS COMPANY ET AL.  
v.  
CHICAGO & NORTH WESTERN RAILWAY COMPANY  
ET AL.

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*Submitted October 7, 1918. Decided February 20, 1919.*

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Rates on bituminous coal, in carloads, to Niles Center, Ill., from points on defendants' lines in Pennsylvania, West Virginia, Kentucky, Ohio, Indiana, and from mines in Illinois by way of interstate routes found unreasonable and unduly prejudicial. Reasonable and nonprejudicial relationship of rates prescribed for the future. Reparation denied.

*M. F. Gallagher and E. B. Wilkinson* for complainants.

*W. F. Peter* for Chicago, Terre Haute & Southeastern Railway Company; *R. H. May* for Chicago, Burlington & Quincy Railroad Company; and *W. N. King, James Stillwell, E. S. Ballard, Charles P. Stewart, Kenneth F. Burgess, and Robert H. Widdicombe* for defendant carriers.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND AITCHISON.

BY DIVISION 2:

The original complaint in this proceeding was directed specifically against the rates on bituminous coal, in carloads, in effect prior to June 25, 1918, to Niles Center, Ill., from points on the defendants' lines in Pennsylvania, West Virginia, Kentucky, Ohio, Indiana, and from mines in Illinois by way of interstate routes. These rates were made by combination on Chicago, Ill., composed of joint rates to Chicago and the Chicago & North Western Railway's local rate of 55 cents per net ton from Chicago to Niles Center, except from points in Indiana and Illinois, from which a proportional rate of 10 cents less than the local rate to Chicago was applicable as a component to Chicago in making rates to Niles Center. Rates are stated in amounts per net ton and, unless otherwise noted, are those in effect prior to June 25, 1918, on which date all of the defendants' rates on coal were increased 15 cents or more per net ton under General Order

52 I. C. C.

No. 28 issued by the Director General of Railroads. By supplemental complaint the Director General was made a party defendant, and the issues were enlarged to include the rates established by and under his direction and authority from and to the points concerned. The Director General answered, waiving demand for further hearing.

Niles Center is a local station on the Chicago & North Western, hereinafter called the North Western, about 2 miles north of the corporate limits and switching district of Chicago, and on a branch line extending from near Peterson avenue, on the Mayfair cut-off, in a northwesterly direction to Blodgett, Ill., where it connects with one of the North Western's main freight lines. The Mayfair cut-off projects from Mayfair in a northeasterly direction through Peterson avenue, Weber, and Greenwood boulevard to Evanston, Ill., a point on the North Western's main line extending from the Madison street terminal in Chicago through Deering, Ravenswood, Rose Hill, and Evanston to Wilwaukee, Wis.

Most of the coal in question is delivered to the North Western, which receives no line haul on any of this traffic, by connecting lines either at Fortieth avenue or Wood street yards and transported by it in a northerly direction from or by way of its Fortieth avenue yard through Mayfair to Niles Center, which is outside the Chicago switching district, about 2.5 miles northwest of Peterson avenue, 4.7 miles from Mayfair, and 9.77 miles from Fortieth avenue.

On December 1, 1916, the carriers from Indiana and Illinois points increased their rates on bituminous coal to Chicago 5 cents, following *Indiana and Illinois Coal*, 40 I. C. C., 603. Prior thereto the rates from various producing points in the east had been increased either 5 or 10 cents as more particularly described in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325. Subsequently the carriers east of Chicago filed tariffs, effective on various dates in July, 1917, increasing their rates to Chicago 15 cents, following in principle the readjustment permitted in *Bituminous Coal to C. F. A. Territory*, 46 I. C. C., 66. In *The Fifteen Per Cent Case*, 45 I. C. C., 303, we permitted the carriers in the western district to increase their rates a maximum of 15 cents, effective July 1, 1917. Effective on various dates in July, 1917, both the rates to Chicago and from Chicago to Niles Center were increased 15 cents, which resulted in a total increase in the through rates of 30 cents.

At least 23 points on the North Western in or near Chicago take the Chicago rates or slight arbitraries over those rates. Many of these points are farther than is Niles Center from Fortieth avenue, which interchange point will be used as representative. The following table of rates and distances is illustrative:

52 I. C. C.

From Fortieth Avenue to—	Distance.	Rate basis.
	<i>Miles.</i>	
Deering.....	11.00	Chicago rates.
Des Plaines.....	13.35	Do.
Edison park.....	9.77	Do.
Jefferson park.....	6.15	Do.
Mayfair.....	5.07	Do.
Maywood.....	6.54	Do.
Melrose park.....	7.44	Do.
Park Ridge.....	10.57	Do.
Ravenswood.....	13.19	Do.
Rose Hill.....	14.75	Chicago rates plus 5 cents.
Peterson avenue.....	7.14	Do.
Weber.....	10.04	Chicago rates plus 10 cents.
Greenwood boulevard.....	11.22	Do.

All of these points are within the limits of the Chicago switching district, defined in the so-called Lowrey tariff. Des Plaines, Park Ridge, Edison park, and Jefferson park are northwest of Mayfair on the Wisconsin division; Melrose park and Maywood are west of Fortieth avenue on the Galena division.

The principal issue is one of alleged discrimination or undue preference in the through rates to points taking the Chicago basis of rates as compared with the through rates to Niles Center. The complainants ask that Niles Center be accorded the same through rates as apply from the various points of origin to points in or near Chicago which take the Chicago rates, and urge that in any event the rates to Niles Center should not exceed the rates to Chicago by more than 10 cents. The defendants contend that the combination rates to Niles Center are reasonable and compare favorably with the rates made by combination on Chicago to various other points in Illinois near Chicago located on the North Western or on the lines of other carriers, of which rates the following are representative:

From Pittsburgh, Pa., to—	Distance.	Rate.	Ton-mile earnings.
	<i>Miles.</i>		<i>Mills.</i>
Niles Center <sup>1</sup> .....	516	\$2.60	5.25
Evanston <sup>1</sup> .....	519	2.60	5.00
Wilmette <sup>1</sup> .....	520	2.60	5.00
Calvary.....	521	2.60	4.99
Morton Grove.....	524	2.60	4.96
Winfield.....	530	2.68	5.06
Hillside.....	528	2.75	5.21
La Grange.....	524	2.70	5.15
Willow Springs.....	528	2.75	5.21

<sup>1</sup> Through Mayfair.

The flower growers at Niles Center consume about 10,000 tons of coal annually. Their largest competitors are located at Des Plaines, Park Ridge, Jefferson park, Ravenswood, Rose Hill, and Maywood, but they also compete with producers at or near Weber and Greenwood boulevard and other points taking either the Chicago rates or



5 or 10 cents over those rates. The flowers of complainants' competitors are substantially of the same general grade as complainants' and are generally commingled and sold by an association within the limits of a single square in Chicago. Coal represents 40 per cent of the expense in their production, and the complainants state that they are unable to increase the price of their flowers so as to overcome the disadvantage due to the higher rates on coal.

Generally speaking, the Chicago basis of rates on bituminous coal is extended to manufacturing and intermediate points embraced within what is commonly referred to as industrial Chicago. The limits of this industrial district conform, in a general way, to those defined in the Lowrey tariff, but the tariffs of the individual carriers provide for switching and absorption charges different from those stated in that tariff. The basis of rates on bituminous coal is made upon the theory that the carriers will be compensated for the inbound service by the outbound haul on manufactured products. The defendants urge that this proceeding is but an attempt to extend the limits of the Chicago switching district; that it would be unfair to the carriers to extend the Chicago rate to Niles Center as substantially no outbound tonnage is forwarded from that point; and that to do so would result in numerous complaints from other points just outside the switching district. It is also urged that the traffic to Niles Center is very light although there is a heavy volume of through traffic and that the North Western finds it expedient to handle coal to Niles Center in a road-haul movement, whereas a switching service is performed from Fortieth avenue to the other points cited by the complainants. It is not shown what the difference in cost would be if it were practicable to switch the traffic to Niles Center. Many of the points cited in comparison are located on elevated tracks and in the congested districts of Chicago, which is not true as to Niles Center. Frequently we have found that a switching service, especially where congestion prevails, is more expensive than a road haul for a like distance, and the defendants' witness admitted that the cost of the switching service to Ravenswood, for example, may be somewhat greater than the cost of the road haul to Niles Center because of the congested conditions en route to the former point. In previous reports we have described the conditions respecting the delivery of coal from eastern points to points in and near Chicago both within and without the Chicago switching district. *Gilmore & Co. v. C. & N. W. Ry. Co.*, 25 I. C. C., 408; *Advance on Coal within Chicago Switching District*, 27 I. C. C., 71; *Chicago Switching Charges*, 28 I. C. C., 677; *Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co.*, 30 I. C. C., 71; and *Switching Charges on Coal and Coke*, 32 I. C. C., 444, 446. While recognizing the advan-

tages accruing to the public as well as to the carriers from the establishment of that district, we have also held that the proximity of points just without or beyond that district can not be ignored when the question of through rates to the latter points comes up for consideration; and this is particularly true where there is substantial competition as between the points within and without the district. Niles Center is about the same distance from Peterson avenue as is Weber on the Mayfair cut-off, but the rate to Niles Center is 45 cents higher than to Weber. While the physical transportation to and the geographical location of Niles Center do not appear to differ materially from those of Weber, Greenwood, and other points cited by complainants, we are of the opinion that in view of its location outside the switching district Niles Center is not entitled to the Chicago basis of rates. In *Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co.*, *supra*, and *Lombard Brick & Tile Co. v. C. & N. W. Ry. Co.*, 30 I. C. C., 84, we found that the through rates on bituminous coal from eastern mines to Elmhurst and Lombard, Ill., stations on the North Western, 12 and 16 miles, respectively, west of Fortieth avenue and 3 and 7 miles, respectively, west of Proviso, a terminal of the North Western on the western boundary of the Chicago switching district, were unduly prejudicial to the extent that they exceeded the Chicago rates by more than 35 cents. In those cases the competition as between the points of destination there in question and Proviso and other Chicago rate points was less acute than that between Niles Center and points taking the Chicago basis of rates.

We are of opinion and find that the defendants have not justified the double 15-cent increase; that the rates in effect prior to June 25, 1918, were, and that the present rates are, and for the future will be, unreasonable to the extent that they exceeded, exceed, or may exceed by more than 15 cents per net ton the rates contemporaneously maintained to Chicago. We further find that the rates assailed were, are, and for the future will be, unduly prejudicial to the extent that they exceeded or may exceed by more than 15 cents per net ton the rates contemporaneously maintained by the defendants on like traffic from the same points of origin to Chicago. Evidence as to the payment of the freight charges on shipments made within the statutory period was introduced by only three of the complainants and the record fails to establish that they paid and bore the freight charges on any interstate shipments. While it appears that the charges were paid by two of the complainants in the first instance, they were charged back to the consignors. There is therefore no basis for an award of reparation.

An appropriate order will be entered.

52 I. C. C.

No. 10101.  
HITE & RAFETTO  
v.  
CENTRAL RAILROAD COMPANY OF NEW JERSEY.

*Submitted December 4, 1918. Decided February 25, 1919.*

Demurrage charges collected on various shipments of bituminous coal arriving at defendant's pier in Elizabethport, N. J., during February and March, 1916, under the tidewater average plan, while complainants maintained barges at defendant's pier, registered to receive such coal, found illegal to the extent stated in the report.

*Charles S. Allen* for complainants.

*A. H. Elder* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND AITCHISON.

*AITCHISON, Commissioner:*

The complaint herein involves a construction of the tidewater demurrage tariff of the defendant. Under the applicable tariff demurrage on cars of coal consigned to tidewater points for transshipment by vessel was computed on the monthly average plan, allowing an average detention of five days per car free of charge. In computing the time of detention—

Rule 5. A car shall be deemed to be released—\* \* \*

(d) When a vessel registering as ready to load, the cargo in its entirety being in cars at the pier and ordered dumped into such vessel by the shipper or consignee.

(e) When a vessel arriving, registering and ready to load and willing to lay with a part cargo, on the cars at the port of such part cargo as vessel takes.

During the months of February and March, 1916, 69 carloads of bituminous coal arrived at defendant's pier in Elizabethport, N. J., for the account of complainants. Notice of arrival was given to complainants, who thereupon sent barges to the pier, and registered them to receive the coal. The barges were of sufficient capacity to take the coal. It was the duty of the defendant to unload the coal and dump it into the waiting barges. Owing to severe weather conditions and lack of facilities for thawing the coal, which was frozen in the cars, defendant was unable to unload the coal from the cars into the

52 I. C. C.

barges with promptness. Complainants made repeated unavailing efforts to ascertain when the cars would be unloaded, and 7, 9, and 18 days respectively after registering the barges withdrew three of them and sent them elsewhere. At a later date other barges were placed at the pier, and ultimately the defendant unloaded the coal from its cars into barges which were not withdrawn and into such substituted barges.

Certain of the barges into which the coal was ultimately dumped registered under paragraph (d) and others under paragraph (e) of rule 5. Demurrage charges in the sum of \$774 were collected on all the cars to the date the barges registered into which the coal was dumped, after allowing an average of five days' free time from the first 7 a. m. following the date of arrival of the cars. It is the complainants' contention that the demurrage should be computed from the dates of registration of the original barges rather than from the dates of the registration of the barges into which the coal was dumped. On this basis, it is claimed, no demurrage would have accrued. Defendant answers this by saying that there is no connection between any particular car and a barge until the coal is dumped therein, as the coal ordered unloaded is not designated by car numbers. The record is so confused that we can not determine just what demurrage charges would have accrued had the cars been promptly dumped. For instance, the complaint indicates that the barge *John Barnes* registered on February 29, while exhibit 1 to the complaint indicates that it did not register until March 29, and that it finished loading on March 31. On the other hand, the answer of the defendant admits that the barges registered on the dates set forth in the complaint. Defendant's exhibit 2 indicates that the barge did register on February 29 and that it completed loading on March 15.

Upon consideration of all the facts of record, and the contentions of the parties, we find that in computing demurrage, under the governing tariff of the defendant, cars should be deemed to be released upon the date that the complainants registered the barges as ready and able to accept delivery of the coal, to the extent that the complainants ordered coal placed therein; and that in computing the monthly detention of cars, the period that the barges remained at the pier ready to receive the coal should be excluded. The defendant's inability to complete delivery should not operate to the prejudice of complainants. Compare *Castner, Curran & Bullitt v. P. Co.*, 42 I. C. C., 3. On the other hand, after the withdrawal of the registered barges, time should again be computed against complainants to the same extent, and until the registration of the substituted barges. It was incumbent upon complainants to keep themselves in a position to accept delivery.

We further find that complainants made the shipments as above described and paid and bore the demurrage charges thereon, and that they are entitled to reparation, with interest, covering demurrage charges illegally collected for the period during which the barges were at the pier registered and ready to receive coal. As the exact amount of reparation due can not be determined upon the record, complainants should file a statement in accordance with rule V of the Rules of Practice, also showing the date the demurrage charges were paid. Upon receipt of a statement so prepared by complainants and verified by defendant, we will consider the entry of an order awarding reparation.

Complainants contended that if the defendant carrier had exercised ordinary care to provide equipment and facilities for thawing the cars of frozen coal practically no demurrage would have accrued. This contention, raised upon argument, is not based upon any issue raised by the complaint, and need not be considered.

The complainants also allege that undue preference was extended by defendant to other shippers by a more prompt loading of their vessels. The instance of one barge was specifically mentioned, but it appears that the particular barge was loaded with anthracite coal under materially different conditions. No other evidence upon this allegation was adduced.

In the complaint we are asked to establish reasonable and just regulations and practices. However, the question of reasonableness of rules for the future was not gone into upon the hearing, and no finding or order with respect to the future will be made.

52 I. C. C.

No. 8565

## BIG SANDY &amp; CUMBERLAND RAILROAD COMPANY.

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*Submitted April 20, 1918. Decided March 3, 1919.*

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Joint rates between the Norfolk & Western Railway and the Big Sandy & Cumberland Railroad, the divisions thereof, and the rules, regulations, and practices applicable thereto, in effect at the time of the hearing, not shown to have been unduly preferential or otherwise unlawful. Proceeding discontinued.

*Edward H. Hart* for Norfolk & Western Railway Company.

*Landon C. Bell* for Big Sandy & Cumberland Railroad Company.

## REPORT OF THE COMMISSION.

## BY THE COMMISSION.

This proceeding was instituted on our own motion for the purpose of determining whether the joint rates between the Norfolk & Western and the Big Sandy & Cumberland Railroad, hereinafter called the Big Sandy, the divisions thereof, and the rules, regulations, and practices applicable thereto were unduly preferential or otherwise unlawful. The Director General of Railroads is not a party to this proceeding.

The Big Sandy has previously been recognized by us as an interstate common carrier subject to the act and to our jurisdiction. *Blankenship v. B. S. & C. R. R. Co.*, 17 I. C. C., 569. It was organized in 1900 under a legislative charter of the state of Virginia and has an authorized capital stock of \$100,000, of which \$50,000 has been issued. There are no bonds. All the stock, except qualifying shares, is owned by the W. M. Ritter Lumber Company, hereinafter termed the lumber company. This road commenced operations in 1903 at which time it extended from Devon, W. Va., through the state of Kentucky to Hurley, Va., approximately 14 miles. It has since been extended to Grundy, Va. It operates a trackage of 34.11 miles, of which 33.08 miles is main track and 1.03 miles yard track and sidings. It owns 5.39 miles of its line and leases the remainder. All the track is narrow gauge, but a third rail makes 3.31 miles available for standard-gauge equipment. Its present equipment consists of 6 locomotives, 69 freight cars, 2 passenger cars, and 1 combination car, all of which it owns.

52 I. C. C.

The country served by the Big Sandy is very rough and mountainous and presents difficult operating conditions. All the points on its line are local to it, except Devon, which is also served by the Norfolk & Western, the Big Sandy's only trunk line connection. Grundy, the largest town on its line, has about 1,000 inhabitants, and the population of the territory dependent upon the Big Sandy for rail transportation is estimated at about 6,000. The lumber company is the only industry on its line, although it serves a number of independent mercantile establishments. The lumber company operates tram roads from connections with the Big Sandy into the timber and also operates log trains over the rails of the latter with its own equipment, power, and crews under regularly established tariff charges.

The Big Sandy performs a general railroad service, including the transportation of freight, in carloads and less than carloads, passengers, and mail. It files tariffs and annual reports with, and keeps its accounts as required by, the Commission.

The record in this proceeding, made in July, 1916, embraces statements of the divisions received by the Big Sandy out of the then joint rates to which it was a party. Subsequently various changes and increases were made in these rates, but we are not advised whether or not there had been changes in the divisions. Our discussion of the rates and divisions therefore will be confined to those in effect at the time of the hearing, and the rates are stated in cents per 100 pounds unless otherwise noted.

The local tariff of the Big Sandy carried rates that varied with distance. The class rates ranged from 28 to 60.9 cents, first class, and from 11 to 20.9 cents, sixth class. Local commodity rates were published on a few articles, including lumber, on which the rates ranged from 5 to 8 cents, carloads, and from 12 to 21 cents, less than carloads. Rates between stations on the Big Sandy and points necessitating a haul of 150 miles or less over the Norfolk & Western to or from Devon were the sums of the locals. Joint rates between stations on the Big Sandy and points requiring a haul of more than 150 miles over the Norfolk & Western to or from Devon were made by adding to the Devon rates certain arbitraries of the Big Sandy. The class arbitraries ranged from 19.4 to 50.9 cents, first class, and from 8.6 to 17.9 cents, sixth class. The carload lumber arbitrary was 2 cents. In dividing these joint rates the Big Sandy received, in addition to the arbitraries mentioned, certain amounts ranging, on the classes, from 10 cents first class to 3 cents sixth class. On carload lumber its division was 2.5 cents. The tariffs of the Big Sandy named charges of from 25 to 75 cents per car, according to distance, on logs transported over its line in shippers' equipment by shippers' power

52 I. C. C.

and crews. This rate is used only by the lumber company. They also named what was in substance a transit charge of 1 cent on lumber from Kelsa, Hurley, and Blackey, Va., where the lumber company's sawmills are located and its lumber shipments originate, to Lower Elk, Ky., where the lumber company's planing mill and sorting yard are located.

Lumber moving under this rate, after being planed or graded and sorted at the last-named point, was sent on to its destination off the line of the Big Sandy waybilled from Lower Elk, 3 miles from Devon, whereas it really originated at the mill points mentioned, 10.73, 13.89, and 17.55 miles, respectively, from Devon. The average haul of the Big Sandy was about 14 miles, and the joint rates on lumber from the four stations mentioned to points reached by a haul of more than 150 miles over the Norfolk & Western were the same. It will be noted from the rate statement set forth above that the revenue of the Big Sandy on lumber traffic was 4.5 cents, made up of its division of 2.5 cents, plus the arbitrary of 2 cents. Under our order in *The Tap Line Case*, 31 I. C. C., 490, the maximum division permitted on lumber for the distances which it is hauled by the Big Sandy from Kelsa, Hurley, and Blackey to Devon is 2.5 cents, and it is provided in the same order that when the rates from points on the tap line are made by the addition of an arbitrary the amount of such arbitrary shall accrue to the tap line. It therefore appears that the amounts received by the Big Sandy out of the joint rates on lumber are not in excess of those authorized in the above-entitled case.

The following table is an analysis of the Big Sandy's traffic and revenue for the year ended June 30, 1916:

	Traffic.		Revenue.		Average per ton.
	Tons.	Per cent of total.	Amount.	Per cent of total.	
W. M. Ritter Lumber Co.....	69,868	99.40	\$45,419.44	98.59	.....
Independent shippers.....	424	.60	648.49	1.41	.....
Total.....	70,292	100.00	46,067.93	100.00	.....
Interchange traffic:					
W. M. Ritter Lumber Co.....	33,562	47.75	33,430.69	72.57	\$1.00
Independent shippers.....	179	.25	316.67	.69	1.80
Local movements:					
W. M. Ritter Lumber Co.....	36,306	51.65	11,988.75	26.02	.33
Independent shippers.....	248	.35	331.82	.72	1.34
Total.....	70,292	100.00	46,067.93	100.00	.....

In addition to the above, the Big Sandy handled 4,075 tons of less-than-carload traffic, from which it derived a revenue of \$21,094.99, 53.64 per cent of the tonnage and 48.52 per cent of the revenue being

52 I. C. C.



supplied by the lumber company and 46.36 per cent of the tonnage and 51.48 per cent of the revenue by independent shippers. During the same year it received \$7,247.18 for carrying 15,984 passengers; \$1,065.25 for carrying mail; and \$6,603.50 accrued to it on 10,360 cars of logs hauled over its rails by the lumber company. Lumber and forest products constituted 81.65 per cent of its carload traffic, exclusive of the logs hauled by the lumber company.

The book value of the equipment of the Big Sandy on June 30, 1915, was \$25,453.59. This road's annual report for 1917 showed its total investment in road and equipment as \$60,390.39. About 1.5 miles of its leased line is owned by the Knox Creek Railway Company, a short line controlled by the Big Sandy. The rental is \$1,200 per annum and includes both the right of way and the rails. The right of way for the remainder of the leased line and certain station property is owned by the lumber company. All the rails of the Big Sandy, other than those on the portion leased from the Knox Creek Railway, are relaying rails owned by the Norfolk & Western. The annual rental paid to the lumber company is \$17,510.80 and the value of the property rented is shown in an exhibit as \$156,255.82. This amount did not include about 9.2 miles of the last extension of the line from Matney, Va., to Grundy. The annual rental for the Norfolk & Western's rails is \$1.30 per ton.

The last annual report also showed that the Big Sandy had an accrued deficit of \$46,668.69, of which \$20,909.74 was the net loss for the year ended December 31, 1917.

Upon this record we do not find that the joint rates between the Norfolk & Western and the Big Sandy, the divisions thereof, or the rules, regulations, or practices applicable thereto, in effect at the time of the hearing, were unduly preferential or otherwise unlawful. An order will be entered discontinuing the proceeding.

52 I. C. C.

No. 9940.

F. T. CROWE &amp; COMPANY

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

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*Submitted December 12, 1917. Decided February 26, 1919.*

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Minimum weight of 30,000 pounds on concrete mixers, in carloads, from Waterloo, Iowa, to Tacoma, Wash., found not unreasonable. Complaint dismissed.

*Stanley E. Semple* for complainant.

*S. J. Henry* for Northern Pacific Railway Company and Chicago, Milwaukee & St. Paul Railway Company.

*O. P. Kellogg* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

By DIVISION 3:

It is here alleged that the charges collected by the defendants on two carloads of concrete mixers, shipped from Waterloo, Iowa, to Tacoma, Wash., October 7, 1915, and June 19, 1917, respectively, were unreasonable. Reparation and reasonable rates are asked. Rates are stated in amounts per 100 pounds.

The shipments weighed 23,000 and 26,880 pounds, respectively, and charges were collected at the applicable commodity rate of \$1.50, minimum 30,000 pounds. The minimum weight only is assailed.

The complainant bases its case primarily on *Albin v. C., M. & St. P. Ry. Co.*, 42 I. C. C., 477, in which the reasonableness of the minimum weight on concrete mixers from Milwaukee, Wis., to Seattle, Wash., was considered. We there found that the evidence adduced was not sufficient to establish that the minimum of 30,000 pounds reasonably comported with the average loading of the concrete mixers there in controversy but, on the other hand, tended to show that the minimum of 30,000 pounds could not be loaded on a single car of the length the defendant was capable of furnishing or held itself out to furnish; and further that the defendant had not justified the minimum, which had been increased from 24,000 to 30,000 pounds since January 1, 1910, and that a minimum weight in excess

52 I. C. C.

of 24,000 pounds on carloads of concrete mixers from Milwaukee to Seattle was, and for the future would be, unreasonable.

The complainant's only witness in this case had no personal knowledge as to whether the shipments occupied the entire space in the 40-foot cars which were furnished or whether 30,000 pounds of mixers could have been loaded thereon. It is not clear just what kind of mixers comprised the shipments, but apparently many of the mixers which complainant handles weigh 1,650 pounds each.

For the defendants it was shown that in recent years concrete mixers from other points to San Francisco, Cal., Portland, Oreg., and various eastern destinations, have been loaded considerably in excess of 30,000 pounds in cars of various lengths ranging from about 31½ feet to 42 feet 9 inches. It was stated in their behalf that under the \$1.50 rate large cars could have been ordered for such shipments and that if the defendants were unable to furnish cars of the size ordered, two small cars could have been supplied under the two-for-one rule; and that the complainant could easily have adapted its shipments to correspond to the minimum at the \$1.50 commodity rate, under the two-for-one rule, if not otherwise. The record indicates clearly that the mixers in question differ materially in weight and size from those considered in *Albin v. C., M. & St. P. Ry. Co.*, *supra*.

On March 15, 1918, since the hearing, the \$1.50 rate was canceled and the class A rate of \$1.72, minimum 30,000 pounds, was made applicable. On June 25, 1918, the latter rate was increased to \$2.15, minimum 30,000 pounds, under General Order No. 28 issued by the Director General of Railroads.

We find that the minimum weight assailed was not unreasonable. The carriers concerned are now under federal control and the Director General of Railroads has not been made a party defendant. As no amendment was filed and the increased rate is not in issue, no finding or order for the future will be made.

An order dismissing the complaint will be entered.

52 I. C. C.

No. 9885.  
FEEDERS' SUPPLY COMPANY  
v.  
CHICAGO, BURLINGTON & QUINCY RAILROAD  
COMPANY ET AL.

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*Submitted November 4, 1918. Decided February 26, 1919.*

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Rate on cottonseed-hull bran, in carloads, from East St. Louis, Ill., to Kansas City, Mo., found to have been and to be unreasonable. Reparation awarded and reasonable maximum rate prescribed.

*J. Walter Farrar* for complainant.

*L. C. Mahoney* for defendant carrier.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

The complainant, a corporation manufacturing prepared stock food at Kansas City, Mo., alleges by complaint filed August 27, 1917, that the rate charged by the Chicago, Burlington & Quincy Railroad Company, hereinafter called the Burlington, on 49 carloads of cottonseed-hull bran shipped from East St. Louis, Ill., to Kansas City between November 9, 1916, and November 29, 1917, inclusive, was unreasonable and unduly prejudicial. Reparation and the establishment of a reasonable rate are asked. By supplemental complaint filed after the hearing the Director General of Railroads was made a party defendant. He answered, but no further hearing was asked or had. Rates are stated in cents per 100 pounds.

The shipments, aggregating 2,730,171 pounds, moved over the Burlington's line. Charges were collected at a commodity rate of 10.75 cents, applicable to cottonseed hulls. The governing western classification provided a carload rating of class B on cottonseed-hull bran, and, as there was no specific commodity rate on that article, the class B rate of 19.5 cents was legally applicable. The shipments were undercharged 8.75 cents per 100 pounds. The complainant contends that the rate assailed should not have exceeded 6.5 cents, the rate contemporaneously applicable from and to the same points on cottonseed cake and meal.

Cottonseed cake, meal, and hull bran, or ground hulls, although generally not used for the same purposes, are ingredients of prepared stock food, the average value of the hull bran being about one-fourth that of the other commodities. The average loading of these shipments was 55,718 pounds, whereas it was stated for the complainant that 40,000 pounds would be a high average loading for cake and meal.

The injustice of charging a higher rate on hull bran than on cake and meal was admitted for the Burlington and a willingness expressed to make reparation on basis of the 6.5-cent rate, but it was stated on its behalf that, owing to the exceedingly low level of that rate, it would be unwilling to maintain it for the future.

In Fifteenth Section Application No. 2281, filed December 6, 1917, by E. B. Boyd, agent, on behalf of the Burlington and other carriers comprising the principal lines in this territory, authority was sought to file increased rates on cottonseed cake and meal from East St. Louis and related points to Kansas City and other Missouri River points. The proposed rate from and to the points in question was 9 cents, and it was stated that it was the intention of the applicants to make the proposed rates applicable also to cottonseed hulls and hull bran on which the rates were higher. This application was assigned for consideration in connection with this case, but was withdrawn at the direction of the Director General of Railroads. Based on the proposed 9-cent rate and minimum of 40,000 pounds, the earnings would be \$36 per car, or 12 cents per car-mile, for an average distance of 300 miles from Mississippi River to Missouri River points. A rate of 6.5 cents on hull bran would have yielded approximately the same car-mile revenue, based on the average weight of the shipments in question and, complainant observes, would bear substantially the same percentage relation to the proposed 9-cent rate on cottonseed cake and meal as that fixed by us in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, wherein rates on cottonseed products between Shreveport, La., and Texas points were prescribed.

On June 25, 1918, as a result of General Order No. 28 issued by the Director General, the 19.5-cent rate on cottonseed-hull bran was increased to 24.5 cents and the 6.5-cent rate on cottonseed cake and meal was increased to 8 cents.

We find that the rate legally applicable was unreasonable to the extent that it exceeded 6.5 cents per 100 pounds, and that it is, and for the future will be, unreasonable to the extent that it exceeds or may exceed the rate contemporaneously maintained on cottonseed cake or meal. We further find that the complainant made the

52 I. C. C.

shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

52 I. C. C.

No. 9023.<sup>1</sup>

E. CLEMENS HORST COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

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PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 345  
AND 349.

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*Submitted December 18, 1918. Decided February 26, 1919.*

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Rates on hops, in carloads and less than carloads, from certain points in California to certain eastern destinations found to have been unduly prejudicial. Reparation awarded.

*Seth Mann* for complainants in Nos. 9023 and 9023 (Sub-Nos. 1 to 15, inclusive, 17, 18, 19, 22, 24, 27, 28, 31, 33, 34, 35, 36, and 39); *G. J. Bradley* for complainants in No. 9023 (Sub-Nos. 25 and 42); *T. J. Geary* for complainants in No. 9023 (Sub-Nos. 16, 21, 23, 26, 29, 32, 37, 38, 40, 41, and 43 to 50, inclusive); *F. J. Wiebers* for

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<sup>1</sup> This report also embraces No. 9023 (Sub-No. 1), Same v. Southern Pacific Company et al.; No. 9023 (Sub-No. 2), Same v. Southern Pacific Company et al.; No. 9023 (Sub-No. 3), Same v. Southern Pacific Company et al.; No. 9023 (Sub-No. 4), Same v. Southern Pacific Company et al.; No. 9023 (Sub-No. 5), Same v. Southern Pacific Company et al.; No. 9023 (Sub-No. 6), Same v. Southern Pacific Company et al.; No. 9023 (Sub-No. 7), Same v. Southern Pacific Company et al.; No. 9023 (Sub-No. 8), Same v. Southern Pacific Company et al.; No. 9023 (Sub-No. 9), Same v. Southern Pacific Company et al.; No. 9023 (Sub-No. 10), Same v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 9023 (Sub-No. 12), Same v. Southern Pacific Company et al.; No. 9023 (Sub-No. 13), Same v. Southern Pacific Company et al.; No. 9023 (Sub-No. 14), Same v. Southern Pacific Company et al.; No. 9023 (Sub-No. 15), Same v. Southern Pacific Company et al.; No. 9023 (Sub-No. 16), William Uhlmann & Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 9023 (Sub-No. 17), T. A. Livesley & Company v. Southern Pacific Company et al.; No. 9023 (Sub-No. 18), Same v. Southern Pacific Company et al.; No. 9023 (Sub-No. 19), Same v. Western Pacific Railroad Company et al.; No. 9023 (Sub-No. 20), Emil Schwarz v. Galveston, Harrisburg & San Antonio Railway Company et al.; No. 9023 (Sub-No. 21), A. Magnus Sons Company v. Northwestern Pacific Railroad Company et al.; No. 9023 (Sub-No. 22), E. Clemens Horst Company v. Southern Pacific Company et al.; No. 9023 (Sub-No. 23), Burger Brothers Company v. Northwestern Pacific Railroad Company et al.; No. 9023 (Sub-No. 24), E. Clemens Horst Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 9023 (Sub-No. 25), Lillienthal Brothers v. Atlantic City Railroad Company et al.; No. 9023 (Sub-No. 26), E. Wattenberg Company v. Galveston, Harrisburg & San Antonio Railway Company et al.; No. 9023 (Sub-No. 27), Hugo V. Loewi v. Northwestern Pacific Railroad Company et al.; No. 9023 (Sub-No. 28), British Columbia Hop Company v. Southern Pacific Company et al.; No. 9023 (Sub-No. 29), Theodore Rosenwald v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 9023 (Sub-No. 30), Falk, Wormser & Company v. Southern Pacific Company et al.; No. 9023 (Sub-No. 31),

complainants in No. 9023 (Sub-Nos. 21, 38, and 45); *Isidor Eckstein* for complainant in No. 9023 (Sub-No. 30); *Emil Schwarz* for complainant in No. 9023 (Sub-No. 20); *Alfred M. Wattenberg* for complainant in No. 9023 (Sub-No. 26); *Theodore Rosenwald* for complainant in No. 9023 (Sub-No. 29); *D. C. Lake* for complainant in No. 9023 (Sub-No. 46); *Charles S. May* for complainant in No. 9023 (Sub-No. 43); *Charles Mohr* for complainant in No. 9023 (Sub-No. 41); *Ernest Reichel* for complainant in No. 9023 (Sub-No. 44); *Samuel Hoff* for complainant in No. 9023 (Sub-No. 47); *Anna A. Johnson* for complainant in No. 9023 (Sub-No. 48); *John Loesch* for complainant in No. 9023 (Sub-No. 23); *Luther K. Seltzer* for complainants in No. 9023 (Sub-Nos. 37 and 49); *Lew Elsas* for complainant in No. 9323 (Sub-No. 5); and *Max Wolf* for complainants in Nos. 9323 and 9323 (Sub-Nos. 1, 2, and 4).

*G. H. Baker* for Atchison, Topeka & Santa Fe Railway Company and Northwestern Pacific Railroad Company; *Elmer Westlake*, *Charles Franklin*, *Fred H. Wood*, and *George B. Hild* for Southern Pacific Company, Union Pacific Railroad Company, Illinois Central Railroad Company, and others; *Allan P. Matthew* for Western Pacific Railroad Company and Denver & Rio Grande Railroad Company; and *James B. Coffey* for Atchison, Topeka & Santa Fe Railway Company.

*R. Walton Moore* for Director General of Railroads.

*F. W. George & Company v. Southern Pacific Company et al.*; No. 9023 (Sub-No. 32). *William H. Fitchard v. Chicago, Milwaukee & St. Paul Railway Company et al.*; No. 9023 (Sub-No. 33). *E. Clemens Horst Company v. Southern Pacific Company et al.*; No. 9023 (Sub-No. 34). *Same v. Southern Pacific Company et al.*; No. 9023 (Sub-No. 35). *Same v. Southern Pacific Company et al.*; No. 9023 (Sub-No. 36). *Same v. Southern Pacific Company et al.*; No. 9023 (Sub-No. 37). *Carl Ullman & Company v. Atchison, Topeka & Santa Fe Railway Company et al.*; No. 9023 (Sub-No. 38). *A. Magnus Sons Company v. Southern Pacific Company et al.*; No. 9023 (Sub-No. 39). *Worcester Brewing Corporation v. Central California Traction Company et al.*; No. 9023 (Sub-No. 40). *C. C. Sweeney & Company v. Southern Pacific Company et al.*; No. 9023 (Sub-No. 41). *Charles Mohr & Brother v. Southern Pacific Company et al.*; No. 9023 (Sub-No. 42). *L. D. Jacks v. Central Railroad Company of New Jersey et al.*; No. 9023 (Sub-No. 43). *Charles S. May Company v. Southern Pacific Company et al.*; No. 9023 (Sub-No. 44). *Baumbach-Reichel Company v. Southern Pacific Company et al.*; No. 9023 (Sub-No. 45). *Newman Brothers v. Southern Pacific Company et al.*; No. 9023 (Sub-No. 46). *Frank D. Miller v. Western Pacific Railroad Company et al.*; No. 9023 (Sub-No. 47). *S. S. Steiner v. Southern Pacific Company et al.*; No. 9023 (Sub-No. 48). *M. M. Cain & Company v. Southern Pacific Company et al.*; No. 9023 (Sub-No. 49). *Carl Ullman & Company v. Southern Pacific Company et al.*; No. 9023 (Sub-No. 50). *Elsas & Pritz v. Southern Pacific Company et al.*; No. 9323. *Herman Goepper Company v. Southern Pacific Company et al.*; No. 9323 (Sub-No. 1). *Klüber, Wolf & Netter v. Southern Pacific Company et al.*; No. 9323 (Sub-No. 2). *Wolf, Netter & Company v. Southern Pacific Company et al.*; No. 9323 (Sub-No. 3). *E. E. Fingarr v. Western Pacific Railroad Company et al.*; No. 9323 (Sub-No. 4). *A. Magnus Sons Company v. Southern Pacific Company et al.*; No. 9323 (Sub-No. 5). *Elsas & Pritz v. Central California Traction Company et al.*; No. 9323 (Sub-No. 6). *Horst Company v. Southern Pacific Company et al.*; and No. 9323 (Sub-No. 7). *Same v. Southern Pacific Company et al.*

52 I. C. O.



## REPORT OF THE COMMISSION.

## DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

The complainants allege that the rates charged on various carload and less-than-carload shipments of hops forwarded from various points in California to numerous interstate and foreign destinations between January 24 and November 20, 1912, were violative of sections 1, 2, 3, and 4 of the act and ask for reparation on basis of rates of \$1.50 and \$2 per 100 pounds, carloads and less than carloads, respectively. By supplemental complaints filed since the hearing in No. 9023 (Sub-Nos. 16, 20, 23, 26, 29, 32, 37, 38, 40, 41, and 43-50), No. 9323, and No. 9323 (Sub-Nos. 1-4 and 6), the Director General of Railroads has been made a party defendant and has answered. No further hearing has been asked or had.

Informal complaints in No. 9023 and Sub-Nos. 1 to 15, inclusive, 22, 33, 34, 35, and 36 were presented within the statutory period by the E. Clemens Horst Company on its own behalf. The formal complaints were filed by the same company as assignee of various corporations, firms, and individuals, consignees of the shipments, who paid the freight charges. In several instances no assignments of the claims in favor of this complainant were presented, and in all cases where assignments were presented they were executed after the expiration of the statutory period. Amendments to the complaints, adding the names of the various consignees as complainants, were offered at the hearing, but these amendments were likewise too late. These claims must be considered barred, with the exception of No. 9023 (Sub-No. 9) and a shipment of 30 bales of hops to the Hausman Brewing Company, of Madison, Wis., in No. 9023 (Sub-No. 33), in which it appears that the consignees deducted the excess freight charges in settlement of their accounts and that the E. Clemens Horst Company actually sustained the damage. In No. 9023 (Sub-No. 29) and in No. 9323 (Sub-No. 5) the complainants were notified February 7, 1916, that reparation would not be awarded on the special docket. The formal complaint was not filed until more than six months later. In No. 9023 (Sub-Nos. 23 and 26) the informal complaints were submitted by B. F. Hall, between whom and the complainants in the formal proceedings no representative relationship is established on the record. The same situation obtains in No. 9023 (Sub-Nos. 31 and 39), in which the informal complaints were submitted by E. Clemens Horst Company. In all four of the claims last mentioned the formal complaints were filed more than two years after the charges were paid, and they are also barred. In No. 9023 (Sub-Nos. 17, 18, 19, and 50) and No. 9323 (Sub-Nos. 3, 6, and 7) no evidence

52 I. C. C.

in support of the claims was offered, and they, together with the claims barred by the statute, will not be further considered. Since the hearing and at complainant's request the complaint in No. 9023 (Sub-No. 11) has been dismissed.

The shipments moved over the defendants' lines, and rates of \$1.75 and \$2.25 per 100 pounds were applied on the carload and less-than-carload shipments, respectively. For many years prior to January 24, 1912, rates on hops from producing points in Oregon, Washington, and California to eastern points were maintained on an equality. Prior to that date the rates were \$1.50 on carload and \$2 on less-than-carload shipments. December 19, 1911, the carriers filed schedules proposing to increase these rates to \$1.75 and \$2.25, respectively, effective January 24, 1912. Upon protest the schedules naming increased rates from Oregon and Washington points were suspended, but through a misunderstanding the increases were permitted to go into effect from California points of origin. After hearing the increased rates from Oregon and Washington were held to have been justified, and became effective November 20, 1912. *In the Matter of Hop Rates*, 25 I. C. C., 16.

The reasonableness of the rates is not attacked. It satisfactorily appears from the evidence that California hops directly compete with those produced in Oregon and Washington in the markets at the destinations in the United States which are involved, and in order for complainants in No. 9023 (Sub-Nos. 16, 20, 21, 24, 25, 27, 30, 32, 37, 38, and 40 to 49, inclusive) and No. 9323 and Sub-Nos. 2 and 4 to dispose of their product it was necessary for them to meet the standard prices by a shrinkage equal to the difference in the freight rates. As to the shipments to points in Canada and to London, England, there is not sufficient evidence of damage upon which to base an award of reparation. A willingness to pay reparation was expressed for the defendants.

The issues in this case are substantially similar to those in *Mebius & Drescher v. Central California Traction Co.*, 42 I. C. C., 599, wherein we found the rates on hops from Elk Grove and Sheldon, Cal., to Milwaukee, Wis., and from Wheatland, Cal., to New York, for export, to have been unduly prejudicial, and awarded reparation on the shipments to Milwaukee.

Following the case cited, and upon the facts of record, we find that during the periods covered by the complaints the rates of \$1.75 per 100 pounds on carload shipments and \$2.25 per 100 pounds on less-than-carload shipments were unduly prejudicial to the extent that they exceeded \$1.50 per 100 pounds, carloads, and \$2 per 100 pounds, less than carloads. We further find that on the shipments made to

52 I. C. C.

points in the United States, not barred by the statute of limitations, the complainants have been damaged to the extent of the difference between the charges paid and borne by them and those that would have accrued at the rates herein found nonprejudicial, and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and the complainants entitled to reparation should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, including the dates on which the charges were paid, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

In connection with these proceedings there were heard those portions of Fourth Section Applications Nos. 345 and 349, filed by R. H. Countiss, agent, by which authority is sought to continue to charge for the transportation of hops, in carloads and less than carloads, from shipping points in California specified in the complaints rates which are lower than the rates contemporaneously maintained on like traffic from intermediate points. It was stated on behalf of the carriers that these deviations would be eliminated. The applications will be denied.

An appropriate order will be entered.

52 I. C. C.

No. 10051.

BERNARD, JUDAE &amp; COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY  
COMPANY.

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*Submitted May 25, 1918. Decided March 7, 1919.*

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Charges on a less-than-carload shipment of egg albumen from Tacoma, Wash., to Chicago, Ill., found to have been unreasonable. Reparation awarded.

*H. C. Lust* for complainant.*J. N. Davis* for defendant.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## By DIVISION 3:

In a complaint seasonably filed by Bernard, Judae & Company on behalf of the W. K. Jahn Company, a corporation dealing in confectioners' and bakers' supplies at Chicago, Ill., it is alleged that the charges collected by the defendant on a less-than-carload lot of dried egg albumen shipped September 29, 1914, from Tacoma, Wash., to Chicago, were unreasonable and reparation is asked. Rates are stated in amounts per 100 pounds.

The shipment, which originated in China, consisted of 50 cases and weighed 12,700 pounds. At the time it moved from Tacoma, there was no specific rating on egg albumen in the governing western classification, and charges were collected in the sum of \$431.80 at the first-class rate of \$3.40, applicable to eggs, condensed or desiccated. Effective October 24, 1914, the defendant established an import commodity rate of \$1.75 on this commodity in less than carloads from Tacoma to Chicago. On February 20, 1915, the western classification established a rating of first class on egg albumen in less than carloads and third class in carloads, minimum 30,000 pounds. Reparation is sought to the basis of the subsequently established commodity rate.

There were cited less-than-carload commodity rates, in effect at the time of movement from and to the points in question, of \$1.25 on tea, sago, tapioca, and spices; \$1.50 on canned goods, desiccated coconut, chicken feathers, and vegetable tallow; and \$1.75 on crude

52 I. C. C.

rubber. No evidence was offered for the defendant, and in its application on the informal docket permission was sought to pay the reparation asked.

While the W. K. Jahn Company was not a party to the transportation records, it was testified that the shipment was made for its account, and that it paid and bore the freight charges and is the real party in interest.

We find that the charges collected were unreasonable to the extent that they exceeded those that would have accrued at a rate of \$1.75 per 100 pounds; that the shipment was made as described; that the W. K. Jahn Company paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation in the sum of \$209.55, with interest. An order awarding reparation will be entered.

52 I. C. C.

No. 8818.  
WALTER A. ZELNICKER SUPPLY COMPANY  
v.  
MALLORY STEAMSHIP COMPANY ET AL.

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*Submitted August 23, 1918. Decided March 7, 1919.*

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Charges on five carloads of old rails and angle bars from Jersey City, N. J., to Louin, Miss., found to have been illegal and unreasonable. Reparation awarded.

*John D. Fidler* for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3: COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

The complainant, a corporation engaged in the manufacture of railway and other supplies at St. Louis, Mo., alleges by complaint seasonably filed, as amended, that unreasonable charges were collected by the defendants on five carloads of old rails and angle bars shipped July 18, 1914, from Jersey City, N. J., to Louin, Miss. Reparation and the establishment of a reasonable rate are asked.

The shipments originated at the steel storage yards of the Central Railroad Company of New Jersey in Jersey City, and moved, as routed by the shipper, over the rail and boat lines of that company to Mallory pier, New York, N. Y.; Mallory Steamship line to Mobile, Ala., and New Orleans, Mobile & Chicago Railroad beyond. Charges were originally collected in the sum of \$2,502.03 at a joint rate of 58 cents per 100 pounds, based upon weights of 407,070 pounds of rails and 23,280 pounds of angle bars, and included \$6 marine insurance. At the time defendants were of the opinion that the charges to Mallory pier were absorbed by the lines parties to the joint rate. Subsequently, additional charges were collected for this movement in the sum of \$192.12 at a rate of \$1 per long ton. The legally applicable rates were: On the rails, 64 cents per 100 pounds made up of the sixth-class rate of 6 cents, applicable in carloads, to Mallory pier and 58 cents beyond; on the angle bars, 66 cents made up of the fourth-class rate of 8 cents, applicable in less than carloads, to Mallory pier and 58 cents beyond. There is therefore an outstanding undercharge equal to the difference between \$1

52 I. C. C.

per long ton and 6 cents per 100 pounds on the rails and 8 cents per 100 pounds on the angle bars. The tariff publishing the 58-cent rate stated that the rates therein were uninsured and made no reference to the Mallory tariff of marine-insurance rates. The marine-insurance charges were therefore illegally assessed.

The contract of sale provided for inspection of the rails by a testing laboratory. The weights upon basis of which charges were collected were obtained by the Central Railroad Company of New Jersey after the rails had been tested. In its answer the Mallory Steamship Company admits an error of 500 pounds in these weights. After that carrier had obtained the weights used, a second test was made and six rails, weighing, according to complainant's evidence, 3,000 pounds, were rejected. The weight as shown in the final report of the laboratory and in complainant's invoice of this material is 403,570 pounds, which we find was the weight upon basis of which charges should have been assessed.

On October 16, 1914, defendants established carload commodity rates, applicable from Mallory pier to Louin, of \$5.25 per long ton, minimum 30,000 pounds, on iron and steel rails, and of \$5.05 per net ton, same minimum, on railway-track fastenings. Complainant contends that the charges collected were unreasonable to the extent that they exceeded those that would have accrued on basis of a rate of \$1 per long ton from Jersey City to Mallory pier and the subsequently established rates beyond.

No evidence was offered to show that the rate legally applicable from Jersey City to Mallory pier was unreasonable. It was testified that the subsequently established rates from New York to Louin represented substantially the all-water rate to Mobile, not on file with us, plus the switching and wharfage charges at that point and the local rate of the delivering line beyond.

We are of opinion and find that the applicable through charges were unreasonable only to the extent that the charges applicable for the movement from New York to Louin exceeded those that would have accrued at rates of \$5.25 per long ton, minimum 30,000 pounds, on the rails and \$5.05 per net ton, same minimum, on the angle bars, based on total weights of 403,570 pounds of rails and 23,280 pounds of angle bars. We further find that complainant made the shipments as described and paid and bore the charges thereon herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the bases herein found reasonable and legal; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and the complainant should prepare a statement showing the details of the shipments in

52 I. C. C.

accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. The outstanding undercharges should be included in this statement.

As to the future we make no finding and enter no order for the reason that the Director General of Railroads, in exercise of powers conferred upon the President by the federal control act, has initiated the rates now in effect. These rates are not in issue and the Director General of Railroads has not been made a party defendant.

52 I. C. C.



No. 10129.<sup>1</sup>

## LOUISVILLE PASSENGER FARES.

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*Submitted February 10, 1919. Decided March 10, 1919.*

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Fifteenth section applications of the Louisville & Southern Indiana Traction Company and the Louisville & Northern Railway & Lighting Company for permission to file schedules increasing the fares for the transportation of passengers between Louisville, Ky., and Jeffersonville, Ind., and New Albany, Ind., respectively, granted to the extent that the fares therein established do not exceed 7 cents.

*Robert G. Gordon* and *J. S. Laurent* for applicants.

*Charles L. Jewett* and *Walter V. Bulleit* for city of New Albany, Ind., United Commercial Travelers, Central Labor Association, New Albany Chamber of Commerce, Young Men's Business Club, Retail Merchants' Association, and Carpenters' & Joiners' Union No. 436.

*Wilmer T. Fox* for city of Jeffersonville, Ind.

*C. B. Stafford* for Louisville Board of Trade.

*James V. Biggert* for depot quartermaster, U. S. A.

## REPORT OF THE COMMISSION.

## BY THE COMMISSION:

The Louisville & Southern Indiana Traction Company and the Louisville & Northern Railway & Lighting Company are before us in this proceeding asking authority to file schedules increasing the fares for the transportation of passengers between Louisville, Ky., and Jeffersonville, Ind., and between Louisville and New Albany, Ind., respectively, from 5 cents to 10 cents, with provision for the sale of commutation tickets at 7 cents per trip. The applications are based on the claim of urgent necessity for additional revenue to meet increased operating costs. In support of the applications it is contended that the present revenues do not provide a reasonable return on the value of the property devoted to the public use.

The Louisville & Southern Indiana Traction Company, hereinafter called the Louisville & Southern, operates an interurban electric railway from its terminal on Third street, between Green and Walnut streets, in the city of Louisville, to Court avenue and Spring

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<sup>1</sup> The report embraces the following fifteenth section applications: No. 4775, filed by the Louisville & Southern Indiana Traction Company, and No. 4776, filed by the Louisville & Northern Railway & Lighting Company.

street in Jeffersonville. Jeffersonville is a town of about 10,000 inhabitants directly opposite Louisville on the Indiana side of the Ohio River. In reaching Jeffersonville the Louisville & Southern operates by virtue of trackage rights over tracks of the Louisville Railway Company a distance of 1.89 miles and over a bridge and tracks owned by the Louisville & Jeffersonville Bridge Company, a distance of 0.94 mile.

The Louisville & Northern Railway & Lighting Company, hereinafter called the Louisville & Northern, operates an interurban electric railway known as the Daisy division from the Louisville & Southern terminal in Louisville to New Albany, a city of about 21,000 inhabitants situated on the Indiana side of the Ohio River 5 miles west of Jeffersonville. By trackage agreements service is maintained over 3.51 miles of track owned by the Louisville Railway Company, over the bridge of the Kentucky & Indiana Terminal Railroad Company, a distance of 1.08 miles, and over 0.17 mile of track in New Albany belonging to the New Albany Street Railway. The total length of the Daisy division is 4.76 miles. Both the Louisville & Southern and the Louisville & Northern operate other lines in Indiana which need not be particularly described here. The Interstate Public Service Company owns a controlling interest in both companies and is in turn controlled by the Middle West Utilities Company.

During the year ended December 31, 1917, the Louisville & Southern earned from all operations \$381,566.81. Its operating expenses, including taxes, amounted to \$292,577.07, resulting in an operating income of \$88,989.74. Income from other sources, including a contribution of \$13,000 from the Middle West Utilities Company, brought its gross income up to \$103,005.39. Interest payments during the year aggregated \$68,513.74, of which \$49,952.08 accrued on \$999,000 of outstanding first-mortgage bonds and \$18,561.66 on sums owed to the Interstate Public Service Company and other individuals and companies. Guaranteed interest on \$250,000 first-mortgage bonds and dividends on \$100,000 of preferred stock of the New Albany Street Railway, together with taxes on that property, totaled \$20,277.85, leaving a balance on hand from the year's operations of \$14,213.80. An examination of the income account shows that notwithstanding the greatly increased travel occasioned by the enlargement of the quartermaster's supply depot at Jeffersonville and the establishment of an Army training camp at Louisville, the income of the Louisville & Southern, after excluding the contribution from the Middle West Utilities Company, was little more than enough to meet its operating expenses and interest charges. Contributions of \$30,700 from the Middle West Utilities Company and

\$4,613.41 from the United Gas & Electric Company, controlled by the Louisville & Northern, enabled the Louisville & Southern to report a balance of \$2,457.82 for the year ended December 31, 1916.

From exhibits of record it appears that since 1910, with the exception of the year ended December 31, 1917, the expenses of operation on the Louisville & Northern as a whole have exceeded its operating revenues. The deficit for the year ended June 30, 1916, was \$12,417.29, and for the preceding year \$12,353.44. The greatest deficit since 1910 occurred during the year ended June 30, 1912, when it amounted to \$22,492.11. There are included in these figures the net results from the operation of an electric-light plant in Charlestown, Ind., conducted as an auxiliary operation. The net operating revenue for the calendar year 1917 was \$17,045.60.

The figures given above represent the results of the operations of the applicants' lines in their entirety. The gross income derived from passenger traffic over the Louisville & Southern between Louisville and Jeffersonville in 1917 was shown to have approximated \$33,000, and over the Louisville & Northern between Louisville and New Albany \$8,000. It is asserted, however, that the earnings in 1917 do not offer a fair test by which to judge the reasonableness of the present fares or those proposed. As hereinbefore stated, conditions of travel were not normal during that year due to the establishment of the training camp at Louisville and the enlargement of the quartermaster's supply depot in Jeffersonville. During the preceding fiscal year ended June 30, 1916, before the activities of the War Department in and near Louisville had brought about the abnormal travel that later developed, the earnings of the Louisville division of the Louisville & Southern are shown by exhibits of record to have amounted to \$15,500. During that year the operations of the Daisy division were conducted at a loss of about \$4,700.

The applicants strongly urge that they are entitled as a matter of law to earn a reasonable return on the value of the property devoted to the public use in the interstate transportation of passengers between Louisville and Jeffersonville or New Albany, whether owned by them or operated under agreements with the owners at a stipulated rental. Predicated upon this theory appraisals were made both of the physical property owned and that over which the applicants have trackage rights, apportioning the value of the latter between the owners and the users upon the basis of relative use measured by methods indicated in the reports of the experts who testified. By means of elaborately prepared exhibits they undertake to show that the proposed fares would be insufficient to yield a reasonable return upon the total value of the property owned by them and of that which they in part use, and must therefore be considered not exces-

sive. We can not accept the theory upon which the attempt to justify these applications rests. However, the record affords sufficient data for a just conclusion without a detailed analysis of the methods of valuing the classes of property here in issue.

The applicants show that only through large donations from the parent company and dividends received on stocks of subsidiary companies have they been able to report a surplus in normal years. They also show that recent advances in the rate of pay of trainmen and other employees will materially increase their operating expenses in the future. Additional revenue is therefore clearly necessary to enable them to become self-supporting and capable of providing efficient service.

Upon consideration of all the facts we conclude and find that a fare of 7 cents would be reasonable for the transportation of passengers between Louisville and Jeffersonville and between Louisville and New Albany and the applications under consideration will be granted to that extent. This conclusion is, we think, consonant with the action recently taken by the Public Service Commission of Indiana with regard to fares on another line operated by one of the applicants herein.

An order will be entered accordingly.

**MEYER, Commissioner**, dissenting in part:

I agree with the majority that the theory upon which these applications rest must be rejected. I also agree that the applicants must have higher fares. We differ only respecting the amount of the increase which is justified upon the record.

Having rejected applicants' theory and, giving proper weight to the amount of their investment, including working capital, rentals, increased wages, and all other expenses, I can find justification for a 6-cent fare but no more. A 7-cent fare, or an increase of 40 per cent in revenue, will yield an excessive return on the investment devoted to the service here in question.

**COMMISSIONER EASTMAN** did not participate in the disposition of this case.

No. 9829.

## WHEELER LUMBER BRIDGE &amp; SUPPLY COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY  
COMPANY ET AL.

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*Submitted December 5, 1918. Decided March 7, 1919.*

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Rates on lumber and articles taking the same rates, or rates related thereto, in carloads, from Kansas City, Mo., to Des Moines, Iowa, found unreasonable and unduly prejudicial to the extent that they exceed or may exceed the rates contemporaneously maintained by the defendants on like traffic from St. Louis, Mo., to Des Moines, Iowa, and defendants required to establish rates on the basis specified.

*J. H. Henderson* and *Walter Condran* for complainant.

*Winston, Strawn & Shaw*, and *B. F. Parsons* for Chicago Great Western Railroad Company; *N. S. Brown* and *Thomas R. Farrell* for Wabash Railway Company; *W. F. Dickinson* and *F. A. Adams* for Chicago, Rock Island & Pacific Railway Company; and *K. F. Burgess* and *L. C. Mahoney* for Chicago, Burlington & Quincy Railroad Company.

*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

## DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## By DIVISION 3:

By complaint filed August 1, 1917, the defendant carriers' rates on lumber and articles taking the same rates, or rates related thereto, in carloads, from Kansas City, Mo., to Des Moines, Iowa, are assailed as unreasonable, unjustly discriminatory, and unduly prejudicial and reasonable rates are asked. Rates are stated in cents per 100 pounds.

The Chicago Great Western Railroad is the short route, 218 miles, from Kansas City to Des Moines, the distances over the Chicago, Burlington & Quincy Railroad, hereinafter termed the Burlington, the Chicago, Rock Island & Pacific Railway, and the Wabash Railway being, respectively, 256, 229, and 322 miles and the average distance 256 miles. At the time of the hearing the rates on lumber in carloads to Des Moines were: 11.5 cents from Kansas City, and 9.5 cents from St. Louis. The complainant, a corporation of Iowa with principal office at Des Moines, contended that the rate from Kansas City to Des Moines should not exceed the rate from St. Louis to the

52 I. C. C.

same destination, approximately 340 miles, and that any difference between these rates should be in favor of Kansas City on account of the difference in distance. It cited in support of its contentions *Wheeler Lumber, Bridge & Supply Co. v. St. L., I. M. & S. Ry.*, 23 I. C. C., 514, decided May 7, 1912, in which we found that the carload rate on lumber from Kansas City to Des Moines was unreasonable to the extent that it exceeded the rate contemporaneously in effect from St. Louis to Des Moines, and the Burlington, the principal defendant, was required to establish a rate upon that basis on or before July 15, 1912. Following that decision, the Burlington reduced the rate on lumber from Kansas City to Des Moines from 11.5 to 9.5 cents, to conform with the rate from St. Louis to the same destination. The Burlington maintained the 9.5-cent rate until October 1, 1916, when it was increased to 11.5 cents. At the time of our decision in the case cited the other carriers defendant herein, the Wabash, the Chicago Great Western, and the Chicago, Rock Island & Pacific, maintained a local rate of 11.3 cents on lumber in carloads from Kansas City to Des Moines. Subsequently the two last-named carriers made various changes in this rate, the rates maintained by them fluctuating from 11.5 to 9.5 cents. For some time prior to October, 1916, the rate maintained by these carriers was 9.5 cents, the rate contemporaneously maintained by all of the defendant carriers other than the Chicago Great Western from St. Louis to Des Moines and by the Burlington from Kansas City to Des Moines. In October, 1916, the rate from Kansas City was increased to 11.5 cents, which rate also applied at that time by way of the Wabash.

The defendant carriers, except the Chicago Great Western, which does not serve St. Louis, proposed to increase the rate on lumber from St. Louis to Des Moines from 9.5 to 11.5 cents, but the proposed schedules were suspended by order dated September 26, 1916, and were found not justified in *Lumber to Iowa Points*, 44 I. C. C., 401, the schedules being required to be canceled on or before July 2, 1917. The respondents' evidence in the case cited was directed more particularly to the justification of other proposed rates and was insufficient to justify the proposed St. Louis-Des Moines rates.

For the complainant it was stated that the discrimination of which it complained was primarily against Kansas City in favor of St. Louis; that it desired to purchase lumber and articles taking related rates from dealers at Kansas City; and that by reason of the location of Des Moines that source of supply should be at least equally as available as St. Louis, but that the adjustment of rates complained of prevented it from purchasing in the Kansas City market. As the rates assailed represented increases since January 1, 1910, the burden was upon the defendant carriers to justify them.

For the defendant carriers there were cited in comparison rates of 11.5 cents on lumber in carloads from Kansas City to the following points on their lines in Iowa: Floris, 218 miles; Lacona, 221 miles; Tyrone, 228 miles; Spring Hill, 229 miles; and Tracey, 257 miles. It was also shown that rates of 12.5 cents applied from Hannibal, Mo., to Kansas City, 200 miles; from St. Louis to Kansas City, 278 miles; and from Davenport, Iowa, to Omaha, Nebr., 320 miles; and that a rate of 13.5 cents applied from Minneapolis, Minn., to Des Moines, 270 miles. The volume of movement under the rates cited was not disclosed.

It was also shown for the defendant carriers that the rates assailed were considerably lower than those applicable from Kansas City to Des Moines on agricultural implements and numerous other commodities. For the defendant Wabash Railway it was admitted that the Kansas City-Des Moines rate on lumber should not exceed the St. Louis-Des Moines rate, but it was contended that the rate from St. Louis was less than a reasonable rate and that it should have been 12.5 cents, the rate applied from St. Louis to Omaha. It was also shown that the rates on 39 commodities from St. Louis to Des Moines were the same as applied from St. Louis to Omaha. In a fifteenth section application filed in January, 1918, subsequent to the hearing, the defendants interested in the rate on lumber from St. Louis to Des Moines proposed to increase that rate to 12.5 cents. That application was later withdrawn at the direction of the Director General of Railroads.

On June 25, 1918, all interstate rates on lumber, including the rates assailed, were increased 25 per cent, but not exceeding 5 cents per 100 pounds, pursuant to General Order No. 28 issued by the Director General of Railroads. By supplemental complaint filed September 30, 1918, the Director General of Railroads was made a party defendant. The supplemental complaint brings into issue the rates so increased and adopts the allegations of the original complaint. The answer of the Director General denies that complainant is entitled to relief and prays that the original and supplemental complaints be dismissed. No further hearing was asked or had.

Following *Wheeler Lumber, Bridge & Supply Co. v. St. L., I. M. & S. Ry.*, *supra*, and upon the facts of record we find that the rates assailed are, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceed or may exceed the rates contemporaneously maintained by the defendants on like traffic from St. Louis to Des Moines.

An appropriate order will be entered.

52 I. C. C.

No. 8463.

N. L. CURRY GROCERY COMPANY, INCORPORATED,  
v.  
SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted June 11, 1916. Decided March 7, 1919.*

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Complaint attacking rate on sugar in carloads from New Orleans, La., to Harrodsburg, Ky., dismissed, the Director General of Railroads not having been made a party defendant and the present adjustment having removed the cause of complaint.

*J. V. Norman* for complainant.

*M. P. Callaway* for Southern Railway Company, New Orleans & Northeastern Railroad Company, and others.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

By DIVISION 3:

It is here alleged that the rates maintained by defendants since June 1, 1915, on sugar in carloads from New Orleans, La., to Harrodsburg, Ky., are unreasonable, unjustly discriminatory, and unduly prejudicial as compared with the rates from New Orleans to Louisville and Lexington, Ky., and in violation of the fourth section. The establishment of a reasonable and nondiscriminatory rate is asked. Rates are in cents per 100 pounds.

Harrodsburg is a local station on the Southern Railway, situated at the junction of the line from Louisville to Danville, Ky., and a branch line extending eastwardly to Burgin, Ky. It is 84 miles southeast of Louisville, 10 miles northwest of Danville, about 5 miles from Burgin, and 32 miles from Lexington by way of Burgin. The Southern connects at Danville and Burgin with the Cincinnati, New Orleans & Texas Pacific Railway, which last-named defendant, with affiliated lines, will be referred to hereinafter as the Queen & Crescent. Burgin and Lexington are intermediate New Orleans and Cincinnati, Ohio, over the Queen & Crescent route, and Harrodsburg is intermediate New Orleans and Louisville over that route in connection with the Southern.

For a number of years the rates on sugar from New Orleans were 17 cents to Louisville and 18.5 cents to Cincinnati and Lexington. On June 29, 1917, these rates were increased to 18.3 and 19.8 cents, respectively. While it was testified that, following the passage of the act to regulate commerce, most of the lines operating from New Orleans to the Ohio River cities continued to maintain higher rates



to intermediate points than to those cities, the Queen & Crescent for a time carried rates to points intermediate to Cincinnati and Louisville no higher than to those cities. It appears that for a number of years prior to August 22, 1913, a rate of 16.5 cents was maintained to Burgin, and that the rate to Harrodsburg equaled the Burgin combination, the local rate from Burgin to Harrodsburg having been generally 6 cents, though from 1909 to 1916 it was 2.5 cents. Effective August 22, 1913, the rate to Burgin was made 23 cents, and that rate was also established to Harrodsburg. In *Rates on Sugar*, 31 I. C. C., 495, and *Sugar Rates from New Orleans*, 32 I. C. C., 606, we considered fourth section applications of various carriers with respect to their rates on sugar from New Orleans and points taking the same rates to Ohio River and Mississippi River points, and concluded, among other things, that relief should be granted to Lexington to the same extent as to Cincinnati. In the last-named proceeding the carriers submitted for approval distance scales of rates to be established over the various routes to the Ohio River cities. We authorized maximum rates of 28 cents from New Orleans to points in this territory intermediate to the Ohio River cities, including Burgin and Harrodsburg, which rates were established June 1, 1915.

Nothing of record seriously challenges the reasonableness of the 28-cent rate to Harrodsburg, and the general adjustment of sugar rates from New Orleans to points in the southeast, including that rate, was approved in *The Southeastern Sugar Cases*, 48 I. C. C., 739. The rate relationship here assailed, however, was not considered in that case.

It will be observed that the earlier rates to Louisville and Lexington were respectively 6 and 4.5 cents, and that the later rates were respectively 4.7 and 3.2 cents, lower than the 23-cent rate formerly maintained to Harrodsburg, and that the later rates were respectively 9.7 and 8.2 cents lower than the contemporaneous rate to Harrodsburg. The complaint seeks a restoration of the former adjustment, though upon the hearing it was urged that the spread between Harrodsburg and Lexington should not exceed 2 or 3 cents.

Since the hearing, pursuant to General Order No. 28 of the Director General of Railroads, effective June 25, 1918, and supplemental orders, the rates from New Orleans to Louisville and Cincinnati were increased to 44.5 and 46 cents, respectively, while to Lexington the rate was made 25 cents. Simultaneously the rate to Harrodsburg was increased to 35 cents. By more recent action of the Director General the rate to Cincinnati and Lexington has been made 45 cents in each instance. The rate from New Orleans to Harrodsburg has thus become 9.5 cents under the Louisville rate and 10 cents under the Cincinnati and Lexington rate. This adjustment completely removes the cause of complaint.

An order dismissing the complaint will accordingly be entered.

No. 9854.

## BOISE COMMERCIAL CLUB

v.

## OREGON SHORT LINE RAILROAD COMPANY ET AL.

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*Submitted August 10, 1918. Decided March 7, 1919.*

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Rate on dried fruit in sacks in carloads, and in sacks and boxes, in mixed carloads, from Fresno and other California producing points to Boise, Idaho, by way of Ogden, Utah, not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

*Martin & Cameron and George B. Graff* for complainant.

*F. H. Wood, C. W. Durbrow, George H. Smith, and Ben C. Dey* for all defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

In the complaint it is alleged that the rate of \$1.20 per 100 pounds applicable to dried fruit in sacks, in carloads, and in sacks and boxes, in mixed carloads, from California producing points near San Francisco, Los Angeles, and Fresno, to Boise, Idaho, by way of Ogden, Utah, is unreasonable and unjustly discriminatory to the extent that it exceeds the rate of \$1 per 100 pounds contemporaneously applicable over that route on the same commodity in boxes in carloads. Reasonable and nondiscriminatory rates are asked. The territory adjoining Fresno is said to be the largest producer of dried fruit in California, and, as evidence is confined to the rates from Fresno, only the rates from that point need be discussed. Rates are stated in amounts per 100 pounds and are those in effect prior to June 25, 1918.

It was testified for the complainant that dried fruit in sacks occupies less cubic space than the same weight of the fruit in boxes, and that a saving in equipment is effected by its transportation in sacks; that the waste occasioned by breakage or tearing of the respective packages is less when the fruit is packed in sacks than when packed in boxes, particularly when the packages are not compactly or carefully loaded; that the net price per pound of the fruit in California is one-half cent higher in boxes than in sacks, and if any difference is made in the rates it should be in favor of the sack package.

52 I. C. C.

On the other hand, the defendants show that box shipments loaded to the full space capacity of a car would weigh considerably in excess of the car's maximum weight-carrying capacity and they represent that as the entire cubic space may not be utilized in cars loaded to their maximum weight-carrying capacity with the box shipments, the greater weight per cubic foot of the sack package is without significance. Complainant's claim with respect to the value of the sack as a container for the fruit is disputed for the defendants, on whose behalf it was testified that the sacks are easily torn by projecting nails and splinters, afford no protection against bruising from heavy loading, cause the fruit to mold when exposed to moisture, and permit it to become tainted by absorbing oils and foreign matter from the floor of the car and loading platform. The record indicates that for the protection of the fruit the packers desire to encourage the use of boxes rather than sacks as containers, and the defendants point out in this connection that if the rates were the same regardless of the package, the net rate on the fruit would be lower when shipped in sacks than when shipped in boxes, as the aggregate weight of the boxes is considerably in excess of the aggregate weight of the sacks.

The complainant asserts that the rates on this commodity are ordinarily the same whether the fruit is packed in boxes or sacks, and seeks to show that, regardless of the container, the same rates apply from Fresno to Boise by way of Portland, Oreg., and from numerous California points to Portland and to Utah common points. As hereinafter explained, the rates cited to Portland are made in competition with the Pacific ocean steamers, and from Fresno to Boise by way of Portland a higher basis of rates is maintained on this commodity in sacks than in boxes. An examination of the tariffs on file with us discloses that the rates from California points to Utah common points are also higher on shipments in sacks than in boxes. The complainant observes that the western and official classifications provide the same rating on various dried fruits in bags and boxes, but the defendants reply that the classifications recognize a transportation distinction between packing in boxes and sacks and by general rules, applicable in the absence of specific provision, provide higher ratings on articles in sacks than in boxes; and that it does not follow because the distinction is not observed in the higher level of class rates that it may not properly be observed in the commodity rates. The transcontinental rates are 20 cents higher on dried fruit in sacks in carloads, or in sacks and boxes in mixed carloads, than in boxes, and, while defending the differential in the rates assailed on the ground of the difference in relative transportation conditions, the defendants' witnesses testify that the trans-

continental rates were made in competition with the ocean coast-to-coast rates and that a differential was observed in those rates. It was further testified that Boise, an interior point, was given the benefit of the transcontinental blanket rates, subject to the Portland combination as a maximum.

Boise is 1,256 miles from Fresno by the route through Ogden, 494 miles from Portland, and 1,340 miles from Fresno by the route through Portland. It is said to be the largest jobbing center between Portland and Salt Lake City, Utah. Boise dealers encounter their chief competition at Portland, to which the all-rail rate from Fresno on dried fruit, in boxes or sacks, in carloads, is 37 cents, minimum 24,000 pounds. To points on the Oregon Short Line Railroad near Boise, to which the average distance from Fresno is less via Ogden and Boise than by way of Portland, the aggregate of the carload rates from Fresno to Portland plus the applicable third-class less-than-carload rates from Portland is materially lower than the aggregate of like rates to and from Boise. For the defendants it was testified that dried fruit moves almost exclusively by water from California to north Pacific coast points and that the 37-cent rate was made in competition with the water rate and was constructed upon the basis of the proportional rate of 12.5 cents then maintained by the boat lines from San Francisco to Portland plus the then existing local rate of the Southern Pacific Railroad, 24.5 cents, from Fresno to San Francisco, both applying on shipments in either container. Effective January 10, 1917, the water rate was increased to 17 cents and on May 1, 1917, to 20 cents. It was testified that the Southern Pacific has since taken steps to adjust its rates to Portland accordingly. However, while the rates to Boise via Ogden on dried fruit are \$1 in boxes and \$1.20 in sacks, in carloads, and \$1.20 in boxes and sacks in mixed carloads, minimum 40,000 pounds, and like joint rates, with a 30,000 pound carload minimum apply by way of Portland, the combination rates on Portland are \$1.14 in boxes or sacks in carloads, or in boxes and sacks in mixed carloads, made up of the 37-cent rate to Portland plus the fourth-class rate of 77 cents, minimum 30,000 pounds from Portland to Boise. The maintenance of joint rates by way of Portland on shipments in sacks in carloads, or in boxes and sacks in mixed carloads, in excess of the aggregate of the intermediate rates, is not protected by a fourth section application and the adjustment is therefore unlawful. The rates formerly maintained to Ogden and to Boise by way of Ogden were the same on this commodity but effective March 1, 1917, the defendants established and have since maintained to Ogden, rates of \$1.10 in boxes in carloads, and \$1.30 in sacks or in sacks or boxes in mixed carloads, with a carload minimum of 40,000 pounds. As

these rates, which are higher than those applicable to Boise, a farther distant point, were established without authority of this Commission, that adjustment is also unlawful.

The principal dried fruits shipped from California to Boise are raisins and peaches, but the record indicates that raisins are not generally packed in sacks. It does not appear that there has been any carload movement of dried fruit in sacks from Fresno to Boise, and while certain of complainants' witnesses anticipate that a reduction in the rate would be productive of a substantial carload movement, it appears from the record that the complainant in reality only seeks the application of the lower rate to shipments in sacks in order to secure that rate on mixed carloads. For the defendant it is contended that an order requiring the maintenance of the same rates, irrespective of the container, would result in a general disturbance of the commodity rates on dried fruit over a wide territory.

The complainant seeks to show that the rates generally from San Francisco to Idaho "are based upon the Missouri River-Idaho scale," but that the rate here assailed is unduly high compared with the rates on dried fruit from the Missouri River to certain Idaho points. The defendants' witnesses testified that the adjustment of rates from the Missouri River has very little to do with the rates to Boise from California. The evidence does not establish the unreasonableness of the 20-cent differential between the rates on the fruit in boxes and in sacks; and the \$1 rate applicable on shipments in boxes is conceded to be reasonable. The earnings under the \$1.20 rate from Fresno to Boise are 19.1 mills per ton-mile and based upon the applicable carload minimum 38.2 cents per car-mile. The earnings under the \$1 rate are 15.9 mills per ton-mile and 31.8 cents per car-mile. These rates apply through a mountainous country with no great traffic density. Boise is approximately 400 miles farther distant from Fresno than is Ogden, to which point the same rates applied until the Ogden rates were increased. The complainant asserts that the average distance for which the rate assailed applies is 1,155 miles, which would somewhat increase the earnings above set forth.

Upon consideration of the facts of record we find that the rate assailed is not shown to have been unreasonable or unduly prejudicial. The Director General, in exercise of powers conferred upon the President by the federal control act, has initiated a rate which exceeds that complained of. The increased rate is not in issue and the Director General has not been made a party defendant.

An order will be entered dismissing the complaint.

52 I. C. C.

No. 10138.  
NATIONAL SUPPLY COMPANY  
v.  
UNION PACIFIC RAILROAD COMPANY ET AL.

*Submitted December 2, 1918. Decided March 7, 1919.*

Rate on semianthracite coal, in carloads, from Hackett, Ark., to Cedar Rapids, Nebr., not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

*George A. Whitney* for complainant.

*Thomas W. Bockes* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

By DIVISION 3:

In this complaint, seasonably filed, it is alleged that the rate charged by the defendants on a carload of semianthracite coal, shipped July 11, 1917, from Hackett, Ark., to Cedar Rapids, Nebr., was unreasonable and unduly prejudicial to the extent that it exceeded a rate of \$3.824 per net ton applicable over routes other than that traversed. Reparation is asked. Rates are stated in amounts per net ton.

The shipment, weighing 95,200 pounds, moved as routed by the shipper over what is now the St. Louis-San Francisco Railway to Kansas City, Mo., and Union Pacific Railroad beyond. Charges were collected in the sum of \$220 at the applicable combination commodity rate of \$4.622, composed of rates of \$3.05 to Beatrice, Nebr., and \$1.572 beyond. A combination commodity rate of \$3.824 contemporaneously applied on this traffic from and to the same points via the defendants' lines in connection with either the Chicago, Burlington & Quincy or the Missouri Pacific railways, through Omaha, Nebr. The distance over the route of movement is 63 miles longer than the short-line distance over the routes through Omaha.

The existence of a lower rate over other routes does not of itself warrant a condemnation of the rate charged and no other evidence was introduced which would support the allegations of the complaint.

We find that the rate assailed is not shown to have been unreasonable or unduly prejudicial, and an order dismissing the complaint will be entered.

52 I. C. C.

No. 9287.

JAMES BUTE COMPANY ET AL

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted November 12, 1918. Decided March 10, 1919.*

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Rate on common window glass, in carloads, from certain Kansas points to Houston, Tex., not shown to be unreasonable, but found unduly prejudicial to the extent that it exceeds or may exceed by more than 7 cents per 100 pounds the rate contemporaneously applicable from the same points of origin to Waco, Tex.; and San Antonio, Tex., found entitled to the basis of rates contemporaneously applicable to Houston from same points of origin. A proper relationship of rates prescribed.

*Huggins & Kayser* and *J. A. Morgan* for complainants.

*G. H. Zimmerman* for William Cameron & Company; and *U. S. Pawkett* for San Antonio Freight Bureau, interveners.

*J. F. Garvin* and *U. S. Burg* for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway of Texas and their receiver; *W. M. Hough* for Beaumont, Sour Lake & Western Railway Company, Orange & Northwestern Railroad Company and New Orleans, Texas & Mexico Railway Company; *L. M. Hogsett* for Texas & Pacific Railway Company and International Great Northern Railway Company and their receivers; *George Thompson* for Texas & Pacific Railway Company and its receiver; *M. J. Dowlin* and *W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company and its receiver, and Chicago, Rock Island & Gulf Railway Company; *F. E. Andrews* for Gulf, Colorado & Santa Fe Railway Company and Atchison, Topeka & Santa Fe Railway Company; and *Gentry Waldo* and *H. M. Garwood* for Southern Pacific lines in Texas.

*R. Walton Moore* for Director General of Railroads.

#### REPORT OF THE COMMISSION.

#### BY THE COMMISSION:

In complaint filed October 10, 1916, as amended, complainants, located at Houston, Tex., alleged that the rate of 45 cents per 100 pounds then applicable on common window glass, in carloads, from Kansas points named in item 2880 of agent Leland's tariff I. C. C. No. 1124, to Houston, Tex., was unreasonable and unduly prejudicial,

52 I. C. C.

and a reasonable and nonprejudicial rate was asked. Interests at Waco and San Antonio, Tex., intervened to secure the maintenance of the existing rate relationship between these points and Houston. By supplemental complaint filed on September 28, 1918, the Director General of Railroads was made a party defendant. He answered, but no further hearing was asked or had. Rates are stated in cents per 100 pounds and are those in effect prior to June 25, 1918, on which date they were increased 25 per cent under General Order No. 28 issued by the Director General of Railroads.

The originating points, 28 in number, are in the southeastern part of Kansas. The only ones from which any material movement is shown are Augusta, Fredonia, Independence, Caney, and Coffeyville, hereinafter called the producing points. The average distance from these points to Houston is 610 miles, and from the entire group 620 miles.

On September 19, 1916, the rate from the producing points to the Dallas-Fort Worth group was reduced from 35 cents to 30 cents, and to Texas common points from 45 cents to 42 cents. On January 24, 1918, the latter rate was extended to Houston. The rates from the other Kansas points to the Dallas-Fort Worth group and to Houston were continued at 35 cents and 45 cents, respectively.

The complaint is predicated principally upon the rates from the Kansas points to the Dallas-Fort Worth group, rates of 30 cents from the same points to Shreveport and Alexandria, La., and 41 cents to New Orleans, La. It was testified that Houston dealers are in direct competition with Dallas, Fort Worth, and Waco dealers for the sale of glass, mostly in less-than-carload lots, at points in intermediate Texas territory; that by reason of the difference in the inbound rates the Houston dealer is at a disadvantage, as the out-bound intrastate rates are the same for like distances. We are asked to nullify an advantage which is legitimate, since Waco is approximately 150 miles nearer the Kansas field of production, and Dallas and Fort Worth still nearer, in order that Houston may compete on an equal basis of rates with those points. The record is devoid of evidence to show wherein the rates to the Louisiana points named affect complainants, while it was testified for the defendant carriers that the rate to the Shreveport group was made by carriers not interested in the Texas situation. The one complainant dealer secures most of its glass from Shreveport, and at times distributes in Texas almost the entire output of the Shreveport glass plants.

Various rate comparisons were submitted for both the complainants and defendants. It is apparent, however, that the complainants' real concern is with the relationship of the rates assailed to the rates contemporaneously maintained from the same points of origin



to the Dallas-Fort Worth group, particularly to Waco. Their complaint and exhibits were first drawn with the object of securing the 35-cent rate then applicable to the Dallas-Fort Worth group from all the Kansas points, but upon the reduction of that rate to 30 cents from the producing points the complaint and exhibits were amended accordingly and the 30-cent rate was asked. We are also asked, in the event that a parity of rates is deemed not justified, to accord Houston a rate not in excess of 5 cents over the Dallas-Fort Worth group rate. Glass is rated fifth class in the western classification, though the commodity rates applied approximate the class D rates. It is argued that, as Waco and Houston average 470 and 620 miles, respectively, from the Kansas points, 5 cents would represent the appropriate difference in class D rates for the greater distance to Houston, under the scale prescribed from Memphis to Southern Arkansas and Louisiana destinations in *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 224, 243, and from Missouri River points to points in Nebraska in *The Missouri River-Nebraska Cases*, 40 I. C. C., 201, 261. It was admitted by a witness for the defendants that with a 35-cent rate to Waco the rate to Houston should not be more than 7 cents higher. This witness insisted, however, that the 30-cent rate to Waco is unreasonably low and was forced upon the carriers by the action of the Missouri Pacific and the Missouri, Oklahoma & Gulf in establishing it to Dallas and Fort Worth. Another witness testified that this rate was extended to Waco in error and should have been confined to Dallas, Fort Worth, and directly intermediate points. The latter witness also pointed out that, at least as early as 1908, the rates on glass from Oklahoma and Kansas points to Texas points beyond the Dallas-Fort Worth group were made 7 cents over the rates to that group. No valid reason is assigned for disturbing the former relationship, and there is no justification for the increase in the spread between the rates from the Kansas points to Waco and Houston to 10 and 12 cents. Glass is a desirable commodity from a transportation standpoint. The average loading per car approximates 46,000 pounds, while many cars load considerably in excess of this weight; and the damage in transit is negligible. The yield under the 30-cent rate from the originating points to Waco is 1.3 cents per ton-mile and, based on the average loading of 46,000 pounds, 29.4 cents per car-mile, while under a 37-cent rate to Houston the yield would be 1.2 cents per ton-mile and 27.5 cents per car-mile, which earnings compare favorably with the yield under other rates on glass in this territory for like distances.

It is admitted by all parties to the record that the rates from the Kansas points to San Antonio should continue to be the same as the rates to Houston.

We are of the opinion and find that the rate assailed is not shown to be unreasonable, but that it is, and for the future will be, unduly prejudicial to the extent that it exceeds or may exceed by more than 7 cents per 100 pounds the rate contemporaneously in effect from the same points of origin to Waco; and that the rate to San Antonio from the same points of origin should not exceed the rate to Houston.

An appropriate order will be entered.

EASTMAN, *Commissioner*, not participating.

52 I. C. C.

No. 9778.

E. I. DU PONT DE NEMOURS &amp; COMPANY

v.

NEW YORK, PHILADELPHIA & NORFOLK RAILROAD  
COMPANY ET AL.

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Submitted October 1, 1918. Decided February 26, 1919.

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Rates on nitrate of soda, in carloads, from Norfolk, Va., to Gibbstown, N. J., found to have been unreasonable to the extent indicated. Reparation awarded.

*Harvey S. Farrow* for complainant.

*George R. Allen* for defendants.

*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

Complainant is a corporation manufacturing explosives at Gibbstown, N. J. By complaint filed July 12, 1917, it alleges that an unreasonable rate was charged by defendants on 24 carloads of imported nitrate of soda, in bags, shipped in March, 1917, from Norfolk, Va., to Gibbstown, and asks for reparation and the establishment of reasonable rates. Rates are stated in cents per 100 pounds as of the date of the hearing.

The shipments, aggregating 2,240,000 pounds, were imported from Chile. They moved from ship side at Norfolk over defendants' lines by car float to Cape Charles, Va., north by rail through Philadelphia, Pa., over the Delaware River bridge and south through Camden and Paulsboro, N. J., to Gibbstown, a distance of 299 miles. Charges were collected in the sum of \$4,950.41, at the applicable joint sixth-class rate of 22.1 cents, minimum 30,000 pounds, governed by the southern classification. This rate has since been increased to 25.5 cents following *The Fifteen Per Cent Case*, 45 I. C. C., 303.

Contemporaneously there were in effect over the route of movement commodity rates of 9 cents from Norfolk to Philadelphia and 6.3 cents from Philadelphia to Gibbstown, a total of 15.3 cents; also a commodity rate of 9.3 cents to Paulsboro and the fifth-class rate of 5.3 cents, governed by the official classification, beyond, a total of 14.6 cents. On August 1, 1917, the fifth-class rate from Paulsboro to

52 I. C. C.

Gibbstown was increased to 6 cents. These departures from the rule of the fourth section were protected by an appropriate fourth section application which has been heard in another proceeding now pending.

Complainant requests the establishment from and to these points of a rate of 9.3 cents, the same as applies from Norfolk to Paulsboro. The latter point is 3 miles north of Gibbstown. The Philadelphia rate of 9 cents also applied to Westville, N. J., intermediate to and 11 miles north of Gibbstown. In comparison with the rate assailed, complainant cites rates of 10 cents from Norfolk to New York, N. Y., a distance of 362 miles, and 19 cents from Philadelphia to Chicago, Ill., a distance of 818 miles. The shipments averaged 93,333 pounds per car, earning \$206.27 per car and 69 cents per car-mile.

Defendants contend that the rate to Philadelphia was made to meet water competition, which does not exist at Gibbstown. Complainant's plant extends from Gibbstown to its wharf on the Delaware River at Thompsons Point, which can accommodate vessels of deep draft and which is available for all-water movement from Norfolk. The all-water rates of the Clyde Line to Philadelphia are extended to Thompsons Point, but there is no regular water service to the latter point.

For defendants it was testified that from Norfolk the rates to Philadelphia and points on the West Jersey & Seashore Railroad are grouped. The first, or Philadelphia, group extends to Westville, the second includes and extends beyond Gibbstown, and the third extends to the Atlantic Ocean. Defendants state that the rate to Paulsboro was published in error and contend that it does not bear the proper relation to the Philadelphia rate. Defendants cite rates of 10.5 cents on this traffic from New York to Gibbstown, a distance of 115 miles, the fifth-class rate of 15.5 cents applicable on nitrate of soda from Baltimore, Md., to Gibbstown, a distance of 149 miles, and the commodity rate of 6.3 from Philadelphia to Gibbstown, a distance of 47 miles by way of the Delaware River bridge route. They further observe that a lighterage and floatage service was necessary at Norfolk in connection with these shipments, and that there has been no further movement. Complainant's witness testified that there will be future shipments from and to these points.

By supplemental complaint filed on September 19, 1918, the Director General was made a party defendant, and the complainant consented to the increase as provided in General Order No. 28 of the rate for the future prayed in its original complaint. The Director General answered. No further hearing was asked or had.

We find that the rate assailed was unreasonable to the extent that it exceeded the aggregate of the intermediate rates, subject to the act, contemporaneously in effect to and from Paulsboro. We further

find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges collected and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$1,680.01, with interest.

Complainant seeks the establishment of reasonable rates for the future. While it would seem logical to make the commodity rate to Gibbstown a reasonable amount higher than that contemporaneously maintained to Philadelphia, the record affords no basis for determining what would be a reasonable commodity rate or what would be a reasonable relationship between the rate to Philadelphia and that to Gibbstown. So far as the record shows, these were the only shipments of this commodity that have moved in carloads from Norfolk to Gibbstown. If in the future shipments should move and defendants have not established a reasonable relationship of rates, complainant may bring the matter to our attention for such consideration as may be necessary.

**An appropriate order will be entered.**

**52 I. C. C.**

No. 8778.

ATLAS PORTLAND CEMENT COMPANY ET AL.  
v.  
NORTHAMPTON & BATH RAILROAD COMPANY ET AL.

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*Submitted December 20, 1916. Decided March 10, 1919.*

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Rates on interstate traffic to and from points on the Northampton & Bath Railroad found to have been unreasonable. Reparation awarded.

*H. T. Newcomb* for complainants.

*Jackson E. Reynolds* for Central Railroad Company of New Jersey.

*Douglas Swift* for Delaware, Lackawanna & Western Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainants are the Atlas Portland Cement Company, a corporation engaged in the manufacture of portland cement at Navarro, Pa., and Levi G. Yeakel and Artanus H. Snyder, dealers in general merchandise at Jacksonville and Weaversville, Pa., respectively. By complaint, seasonably filed, they allege that the rates charged by the defendants on interstate shipments from and to points on the Northampton & Bath Railroad, between April 1, 1914, and January 3, 1916, were unlawful, excessive, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded the rates contemporaneously in effect on similar traffic from and to the junction points between the Northampton & Bath and the other defendants. Reparation and the establishment of joint rates are asked. No evidence was offered in support of complainant Yeakel's claim for reparation, and it will not be considered.

The Northampton & Bath extends east from Northampton, Pa., through Navarro, Weaversville, Jacksonville, and Bath to Bath Junction, Pa., a distance of about 7 miles. It connects at Northampton with the Central Railroad of New Jersey and at Bath Junction with the Delaware, Lackawanna & Western and the Lehigh & New England railroads, hereinafter called the Central, the Lackawanna, and the Lehigh, respectively. In the *Northampton & Bath R. R. Co. Case*, 41 I. C. C., 68, we found that the Northampton & Bath was a common-carrier industrial line and entitled to receive divisions or allowances from its trunk line connections.

Prior to April, 1914, the trunk lines named participated in joint rates with the Northampton & Bath out of which it received \$2.50 per car, minimum 20,000 pounds, on carload freight and 1.25 cents per 100 pounds on less-than-carload freight. The rates maintained were identical generally with the rates to and from the junctions, and the divisions accruing to the Northampton & Bath equalled its interchange switching charges. During April, 1914, the trunk lines canceled the joint rates, thereby rendering applicable higher combination rates based on either Northampton or Bath Junction. On July 10, 1914, the Lehigh provided that it would absorb \$2.50 per car, minimum 40,000 pounds, on all carload traffic to or from Northampton & Bath stations and \$2.50 per car on less-than-carload traffic aggregating 20,000 pounds. On October 4, 1915, the Lackawanna provided that it would absorb the Northampton & Bath's switching charges on all traffic to and from the latter line not to exceed \$2.50 per car on carload shipments and 1.25 cents per 100 pounds on less-than-carload shipments.

Effective January 3, 1916, the Northampton & Bath reduced its switching charges between Navarro and Northampton on the one hand, and the Central's rails on the other, to \$1.85 per car, minimum 20,000 pounds, on carload traffic, and to 1 cent per 100 pounds on less-than-carload traffic. On the same date the Central provided for the absorption of these charges, except on coal and coke.

Complainants seek reparation on inbound and outbound interstate shipments to and from points on the Northampton & Bath, which moved during the periods the combination rates were in effect, on the ground that such rates were unreasonable and unduly prejudicial to the extent that they exceeded the rates contemporaneously in effect to and from the junctions with the trunk lines. The principal outbound traffic of the Northampton & Bath is cement from the plant of its proprietary industry, the Atlas Portland Cement Company. The heaviest movement is to Jersey City, N. J., for local consumption in New York, N. Y. The cement also moves to other eastern tide-water destinations and to points in New Jersey, New York, New England, Pennsylvania, Maryland, Delaware, Ohio, and the southern states.

There are a number of cement plants in northeastern Pennsylvania within a radius of about 30 miles, in the so-called Lehigh group. The same rates generally applied and apply on cement from this group to eastern markets and to New England points, but the rates for shorter hauls are not the same. It does not appear that any plant in the Lehigh district, other than that of the Atlas Company, is served by a short line or industrial common carrier. The allegations of unjust discrimination and undue prejudice are not sustained.

Complainants contend that the burden is upon the carriers to prove that the increased through rates resulting from the cancellation of the absorption of the Northampton & Bath's charges were just and reasonable. No evidence was offered for the defendants. They contend that the issues here presented were determined in favor of the line-haul carriers in the *Second Industrial Railways Case*, 34 I. C. C., 596, and in the *Northampton & Bath R. R. Co. Case*, *supra*, the following excerpt from the latter case being referred to:

There is nothing of record to require the absorption of the Northampton & Bath's interchange switching charges by the trunk lines or to require the extensions of the trunk lines' rates to and from their several termini at Northampton and Bath Junction to and from points beyond on the Northampton & Bath. *Chicago, West Pullman & Southern R. R. Co. Case*, *supra*. Shippers and receivers of freight along the Northampton & Bath might be at a disadvantage in comparison with competitors located along the Central, the Lackawanna, or the Lehigh, if they were required to pay higher rates to and from the various markets in which they deal, but that would be the fault of their location. Shippers without immediate access to the railroads in their neighborhood are at a distinct disadvantage in comparison with shippers on the railroads, and can not reasonably expect the same rates, provided all other conditions are equal.

In that proceeding we did not consider the reasonableness of increased through rates resulting from the cancellations of these absorptions. The specific questions there presented were whether the Northampton & Bath might lawfully be paid any divisions by its trunk line connections, and if so, whether the divisions then paid were proper. The question of divisions is before us in another proceeding. Complainants' contention must be sustained. *Oliver Chilled Plow Works v. N. Y. C. R. R. Co.*, 45 I. C. C., 356.

Some of the shipments on which reparation is asked originated at or were destined to points on lines of carriers not made defendants herein. Under the facts and circumstances of this case it was not essential that such carriers be made parties defendant.

We find that the rates assailed were unjust and unreasonable to the extent that they exceeded those contemporaneously maintained by the defendants, other than the Northampton & Bath, on similar traffic to and from the junctions with that carrier; that complainants except Yeakel made and received numerous interstate shipments of various commodities, which moved over the defendants' lines and which were delivered on and after April 1, 1914, and upon which complainants paid and bore either the entire freight charges or the amounts by which the charges collected exceeded those that would have accrued at the line-haul rates to and from the junctions; that they have been damaged to the extent that the charges paid exceeded those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of



reparation due can not be determined on the present record and complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statements should be submitted to defendants for verification. Upon receipt of statements so prepared and verified, we will consider the entry of an order awarding reparation.

WOOLLEY, *Commissioner*, dissenting:

I am unable to agree with the conclusions of the majority. In an ordinary case of rates increased since January 1, 1910, I would agree to basing our conclusion upon the failure of the defendants to attempt a justification of such rates; but in a case of this kind, where the circumstances are complicated by the fact that the increase was brought about by the cancellation of a provision for the absorption by trunk lines of the entire charges of an industrial line and it is found that the cancellation did not have the effect of creating unjust discrimination or undue prejudice, I am of opinion that we should not assume that the burden-of-proof provision necessarily requires an award of reparation. It can not be assumed that the rates from the junction points were unreasonable, and they were the measure of the rates complained of; therefore in the absence of convincing evidence as to the reasonableness or unreasonableness of rates from Northampton & Bath points we should view the question more as one of the justification of the trunk lines for the cancellation referred to than as one of the reasonableness of the total charges. We know the reasons for the cancellation, *Northampton & Bath R. R. Co. Case*, 41 I. C. C., 68, and I am of opinion that the defendants' action was within their rights and did not establish a basis for an award of reparation.

52 I. C. C.

No. 10240.

GEORGE C. HOLT AND BENJAMIN B. ODELL, AS  
RECEIVERS OF AETNA EXPLOSIVES COMPANY,

v.

LOUISVILLE &amp; NASHVILLE RAILROAD COMPANY ET AL.

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*Submitted February 26, 1919. Decided March 18, 1919.*

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Assessment of import rate, applicable from ship side, to complainants' shipments of nitrate of soda from warehouse at Pensacola, Fla., to North Birmingham, Ala., not in accord with tariff. Domestic rate applicable not found unreasonable or otherwise unlawful. Complaint dismissed.

*Edward E. Miller* for complainants.

*William Burger* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

The complaint in this proceeding, filed August 22, 1918, by the receivers of the Aetna Explosives Company, a corporation, alleges that the freight rate of \$2.25 per ton assessed by defendants on 10 car-load shipments of imported nitrate of soda, forwarded from Pensacola, Fla., to North Birmingham, Ala., in 1916, was unjust and unreasonable in comparison with a rate of \$2 per ton, contemporaneously applicable on similar traffic from Pensacola to Corinth, Miss. Reparation is requested, based upon the application of a rate of \$2 to the shipments involved.

Upon hearing it was shown that the traffic originated in Chile, South America, and was shipped to Pensacola by brokers or producers. At Pensacola it was stored in warehouses for periods varying from 11 to 90 days, and was then loaded into cars and forwarded to North Birmingham. According to defendants' tariff the rate of \$2.25 per ton was applicable from ship side only. The rate applicable to shipments from warehouse was the domestic rate of \$2.05 per ton. Representatives of defendants at the hearing admitted the overcharge of 20 cents per ton. The record indicates that the higher rate from ship side is intended to cover wharfage, storage, and handling at the port. Upon the shipments here involved separate charges at tariff rates had been made for such services.

It was testified in behalf of defendants that the rate of \$2 from Pensacola to Corinth, which is applicable either from ship side or from warehouse, was published by them to meet the import and  
52 I. C. C.

domestic rate of the Mobile & Ohio from Mobile, Ala., to the same destination. However, an investigation by defendants, covering the previous five years, failed to disclose any carload shipments of nitrate of soda from any point to Corinth. It was further testified that shipments routed from Pensacola to Corinth would not move through North Birmingham. Any fourth section departures involved in tariff routings are covered by applications for relief, which were not set for hearing.

The Commission should find that the rate applicable to these shipments has not been shown unreasonable or otherwise unlawful. Complainants' representatives expressed a willingness to have their complaint dismissed upon refund of the overcharge, which should be made promptly. Upon advice that refund has been made, the Commission should dismiss the complaint.

**By DIVISION 2:**

The foregoing report of the examiner was served upon the parties in interest and no exceptions thereto were filed. It states correctly the facts of record, and the conclusions proposed also appearing to us to be correct, we adopt said report and conclusions as our own. Collection of the overcharges was unlawful. They should at once be refunded. An order of dismissal will be entered.

52 I. C. C.

No. 10018.

GEORGE C. HOLT AND BENJAMIN B. ODELL, AS  
RECEIVERS OF AETNA EXPLOSIVES COMPANY,  
v.  
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY  
ET AL.

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*Submitted February 27, 1919. Decided March 18, 1919.*

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Minimum charges assessed on less-than-carload shipments of high explosives from Fayville, Ill., to interstate destinations on the line of the Grand Trunk Western Railway found to be unjust and unreasonable. Reasonable joint minimum charge prescribed.

*Winthrop & Stimson and George G. Reynolds* for complainants.

*H. C. Martin* for Grand Trunk Western Railway Company.

*R. Walton Moore* for Director General of Railroads.

#### REPORT OF THE COMMISSION.

##### DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

The Aetna Explosives Company manufactures high explosives at Fayville, Ill., a point on the Chicago & Eastern Illinois Railroad about 5 miles from Thebes, Ill. It complains of the minimum charges assessed by the Grand Trunk Western Railway on shipments of explosives in less-than-carload quantities from Fayville to points on the line of that carrier in Illinois, Michigan, and Indiana, alleging that they are unreasonable to the extent that they exceed the joint minimum charge on like shipments originating in Delaware, New Jersey, and Pennsylvania and destined to the same points. Apparently the movement from Fayville to destinations in Illinois is intrastate.

Reparation was not requested in the original complaint. Since the hearing, however, an amended complaint has been filed making the Director General of Railroads a party defendant and asking an award of reparation on shipments delivered subsequent to the filing of the original complaint. The Director General answered but did not request further hearing. Hearing on the supplemental complaint having been waived by the complainants the record contains no basis for a finding as to reparation and that issue will not be considered. Rates stated herein were those in effect just prior to June 25, 1918, the effective date of increased class and commodity rates of carriers

under federal control established in compliance with General Order No. 28 of the Director General.

The rules established by the Grand Trunk Western Railway, hereinafter referred to as the defendant, provide a rating of double first class on shipments of high explosives in less than carloads, subject to the following minimum charges: Any single consignment, 5,000 pounds at double the first-class rate; two consignments in the same car and on the same day from one shipping station to one destination, 3,000 pounds each at double the first-class rate; and three or more consignments in the same car and on the same day from one station to one destination, 2,500 pounds each at double the first-class rate.

The defendant participates in joint rates with the Chicago & Eastern Illinois Railroad on class traffic from Fayville but by restrictions in the tariffs joint rates are not maintained on explosives. The rates applicable to explosives are made on combination of the double first-class rates to and from Chicago, Ill., subject to a minimum charge of \$1 to Chicago and the minimum charges of the defendant from Chicago to destination. The complainants ask the Commission to prescribe a joint minimum charge of \$1 because that is said to be the usual minimum throughout the United States and because the defendant participates in joint rates from eastern points to destinations on its line subject to that minimum charge.

The complainants make shipments occasionally to points on the Grand Trunk, but have made no effort to increase the traffic, as the quantities used would amount to less than the minimum demanded. It is said that the average shipment would probably not exceed 500 pounds at any one time to any one destination. The charge on a shipment of 500 pounds from Fayville to Chicago at the double first-class rate of 93.2 cents would be \$4.66. On the same shipment from Chicago to Grand Rapids, Mich., for example, the charge would be \$47 at the double first-class rate of 94 cents, minimum 5,000 pounds, producing a total charge of \$51.66 from the complainants' plant at Fayville. At the joint rate of \$1.54 per 100 pounds on high explosives from Wilmington, Del., to Grand Rapids the charge for the transportation of 500 pounds would be \$7.70. Upon the effective date of General Order No. 28 the charges in each instance were increased in proportion to the increases in the rates.

Justification for the minimum charges demanded by the defendant is placed upon the grounds of hazard in transportation and in handling at stations and upon the alleged inability to utilize a car which contains even a small quantity of high explosives to its full carrying capacity. However, blasting caps, detonators, etc., which are high explosives, are accepted for transportation by the defendant when properly packed for shipment at the double first-class rates with a minimum charge of \$1 per shipment.

It has been the policy of defendant for years not to participate in joint rates on high explosives nor to transport such commodities in less-than-carload quantities between points on its lines or to or from connections on any other basis than that herein above stated. Nevertheless, for a long period of time prior to May 1, 1914, it participated in joint rates published by the Philadelphia & Reading Railway from eastern points to points in Canada and west of the Detroit and St. Clair rivers, subject to a minimum charge of \$1 per shipment.

Effective May 1, 1914, at the direction of the Grand Trunk Railway system the Philadelphia & Reading Railway amended its tariff to provide that the joint rates would not apply to stations on the Grand Trunk in Canada or in the United States. The effect of this amendment was to make applicable the combination of local rates, subject, so far as transportation over the rails of the Grand Trunk was concerned, to the minimum charges above stated. Protests were filed against the increased rates and charges by the E. I. du Pont de Nemours Powder Company and the tariff was suspended. *Rates on High Explosives to G. T. Ry. System Stations*, 33 I. C. C., 567. After discussing the issue as to the jurisdiction of the Commission over a Canadian carrier participating in joint rates for movements from points in the United States over intermediate Canadian rails to other points in the United States, and the policy of the Grand Trunk system respecting the handling of explosives, the report concludes as follows:

The domestic member of the Grand Trunk system is clearly subject to all the provisions of our act, both in the matter of its rates and routes, and under our law may inaugurate no such policy with respect to this particular traffic that has been announced by the Canadian member of that system. The points in Michigan on the rails of the domestic member of the system may be reached over reasonably convenient routes lying wholly within the United States; and a number of the carriers operating south of the lakes in our own territory are parties to the tariffs in question. The protestants are entitled to through routes and reasonable joint rates on this traffic to such destinations, and we shall expect the respondents to withdraw the tariffs under suspension until such routes have been established over the rails of our own lines at the through rates now in effect in connection with the Grand Trunk system. In such rates and routes to local points on its rails the Grand Trunk Western Railway will be expected to join.

An order will be entered requiring the respondents to withdraw the tariffs under suspension until through routes and joint rates have been established as indicated in this report.

It was stated upon the hearing by an official of the Grand Trunk Western Railway that no open through route was ever established wholly within the United States over which high explosives could be forwarded under joint rates from eastern points to destinations

on the line of that carrier. An examination of the tariff discloses, however, that the defendant has continuously concurred, and now concurs, in the tariff published by the Philadelphia & Reading Railway containing rates on high explosives from eastern points, and that this tariff is not restricted as to routing. The rates apply in connection with carriers operating wholly within the United States, and the defendant, therefore, unintentionally has complied with the requirement of the Commission. The only obstacle to the use of these rates lies in the fact that no divisions have been established by the carriers, but the failure to establish divisions does not render the rates inapplicable.

The minimum charges established by the defendant are greatly in excess of the minimum of \$1 maintained by such carriers as the Ann Arbor, Grand Rapids & Indiana, Pere Marquette, and Wabash railways, whose rails extend throughout the same general territory.

The Commission should find that the minimum charges on interstate shipments of high explosives, in less than carloads, from Fayville to points served by the Grand Trunk Western Railway are and for the future will be unjust and unreasonable to the extent that they exceed \$1.

**CLARK, Commissioner:**

The foregoing is substantially the report proposed by the examiner and served upon the parties. No exceptions thereto were filed. The facts are correctly stated and we are of opinion that the conclusions of the examiner are sound. The report and conclusions of the examiner are adopted as the report and conclusions of the Commission. An appropriate order will be entered.

52 I. C. C.

No. 10219.  
NAYLOR & COMPANY  
v.  
DELAWARE, LACKAWANNA & WESTERN RAILROAD  
COMPANY.

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*Submitted February 24, 1919. Decided March 18, 1919.*

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Storage charges assessed at Hoboken, N. J., on certain carloads of pig iron found unreasonable. Reparation awarded.

*P. L. Smith* for complainant.

*Douglas Swift* for defendant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

The complainant in this proceeding, a corporation, claims reparation on account of alleged excessive demurrage and storage charges collected by defendant on 12 carload shipments of pig iron transported by defendant to Hoboken, N. J., for export. When the shipments reached Hoboken, at various dates in January, 1917, the vessel on which they were to be exported had not arrived. Pending its arrival, the shipments were held in cars for varying periods, but were finally unloaded by the defendant in order to release the equipment. They were ordered to vessel on February 17. The average period of holding in cars was about 24 days, and of storage on ground or pier about 10 days. At the time the shipments arrived and during the period of detention defendant's tariff applicable to the traffic contained the following provision:

*Unloading, storage, and reloading coarse freight, carloads.*—When requested by shipper or consignee, the following articles, in carloads, may be unloaded from cars upon open piers, bulkheads or lands of the Delaware, Lackawanna & Western Railroad Company on or adjacent to New York harbor, subject to the charges named below to cover unloading, reloading, and storage for a period of six months, such storage period to be computed from the first 7 a. m. after notice of arrival is sent to consignee.

Among the articles listed is pig iron, and the charge named is 25 cents per ton.

It appears that no specific request for the unloading of these cars was given by shipper or consignee, and defendant collected charges based upon current demurrage rates for the full period from the arrival of the shipments at Hoboken to February 17, less the free time



provided by effective demurrage rules, the amount thus collected aggregating \$682. Collection of charges for the period after unloading was based upon a general tariff provision reading—

Carload freight which is unloaded by the Delaware, Lackawanna & Western Railroad Company for the purpose of releasing needed equipment will be subject to storage charges the same as would have accrued under car-demurrage and track-storage charges, if any, had the freight remained in the car, which charges are provided for in rule 83 and in G. F. D. Circular No. 1186 (I. C. C. No. 11214), supplements thereto and reissues thereof.

The circular last referred to contained the general demurrage rules, a reissue of which at that time provided a charge of \$1 for the first day of detention after free time, \$2 for the second day, \$3 for the third day, and \$5 for each day thereafter.

By complaint seasonably filed, the complainant alleges that the charges collected were unreasonable and unjustly discriminatory, in violation of sections 1 and 3 of the act, and requests reparation in the amount that the charges collected exceed the amount that would have accrued had the charge of 25 cents per ton, provided in the rule first above quoted, been applied for the entire period. Some testimony was offered by complainant tending to establish the existence of a general understanding or arrangement with defendant for the unloading of shipments, but the showing in this regard was too indefinite to be given material weight.

Effective May 15, 1917, defendant's storage rule here in question was amended to read as follows; the principal changes being here italicized:

When requested by shipper or consignee, *or for the convenience of the Delaware, Lackawanna & Western Railroad Company*, the following articles, in carloads, may be unloaded from cars upon open piers, bulkheads, or lands of the Delaware, Lackawanna & Western Railroad Company at New York Lighterage Station, N. J., \* \* \* subject to the charges named below to cover unloading, reloading, and storage for a period of *sixty (60) days*, such storage period to be computed from the *expiration of the free storage period, if any*.

Under the amended rule, the charge for most articles, including pig iron, was increased to 35 cents per ton. The intended effect of the amendments was to permit the application of the storage charge to shipments unloaded by the carrier without request from the shipper or consignee. They also brought the defendant's rule into conformity with that of the Pennsylvania Railroad Company, already in effect. The defendant neither admits nor denies the unreasonableness of its former rule, as applied.

The Commission should find that the collection of storage charges based upon demurrage charges on these shipments for the period sub-

sequent to the unloading and release of the equipment was unreasonable, and that a reasonable charge for that period would be 25 cents per ton. The existence of a general provision for the storage of freight at that rate under substantially similar circumstances, and the extraordinary nature of the demurrage charges effective at the time of the storage of these shipments, differentiate this case from *Parry & Co. v. P. R. R. Co.*, 29 I. C. C., 559, and *Levering Bros. v. P., B. & W. Ry. Co.*, 38 I. C. C., 349, in which cases storage charges based upon demurrage charges were sustained. The record affords no basis for authorizing the defendant to waive the collection of tariff demurrage charges for the period of detention in cars. According to the evidence of record, the complainant was given prompt notice of the arrival of its shipments, and it must be held responsible for failure to request their unloading. The Commission should further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued upon the basis herein found reasonable; and that it is entitled to reparation, with interest. Complainant should prepare a statement of its claim upon this basis, showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date or dates on which the charges were paid, which statement should be submitted to the defendant for verification. Upon receipt of a statement so prepared and verified the Commission should consider the entry of an order awarding reparation.

No evidence was offered upon which the Commission could base a finding of unlawful discrimination or prejudice.

*CLARK, Commissioner:*

The foregoing proposed report of the examiner was served upon the parties. No exceptions thereto were filed. The report correctly states the facts of record and we are of opinion that the conclusions of the examiner are sound. The report and conclusions of the examiner are adopted as the report and conclusions of the Commission.

52 I. C. C.

No. 10054.

IRA B. PERRINE

v.

OREGON SHORT LINE RAILROAD COMPANY ET AL

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*Submitted June 15, 1918. Decided March 7, 1919.*

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Storage charges legally applicable at Twin Falls, Idaho, on 11 carloads of steel rails from Joliet and South Chicago, Ill., found to have been unreasonable to the extent that they exceeded \$1 per car per day. Outstanding undercharges waived and complaint dismissed.

*Samuel H. Hayes* for complainant.

*H. A. Scandrett, George H. Smith, and H. B. Thompson* for defendant carrier.

*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

This complaint, filed February 4, 1918, by complainant as trustee of the Twin Falls Railway Company and in his own behalf, alleges that the charges assessed by the defendant for the storage at Twin Falls, Idaho, of 11 carloads of steel rails were unreasonable and unduly prejudicial. Reparation is asked. By supplemental complaint filed after the hearing the Director General of Railroads was made a party defendant. No further hearing was asked or had.

During the fall of 1912 the Illinois Steel Company shipped 23 carloads of steel rails from Joliet and South Chicago, Ill., to itself at Twin Falls, notify Twin Falls Railway Company. The shipments arrived at destination over defendant's line during November and December, 1912, and January, 1913. The Twin Falls Railway Company was duly notified by the defendant of the arrival of the shipments, but failed to unload and remove them or pay the freight charges thereon. On February 1, 1913, the defendant's assistant general manager wired both the Twin Falls Railway Company and the complainant, its then president, that unless delivery of the shipments was accepted on or before February 5, 1913, the rails would be unloaded and held for accrued charges. Subsequent to the hearing a statement was submitted at the request of the Commission which shows that the 11 shipments covered by this complaint were unloaded on various dates between February 19 and 23, 1913, inclusive, and

52 I. C. C.

stored in the open upon the defendant's right of way at Twin Falls. In July, 1914, the Twin Falls Railway Company obtained possession of the bills of lading covering 12 carloads and took delivery thereof. The charges on these shipments are not in issue. Subsequent to July, 1915, the Illinois Steel Company surrendered the bills of lading for the remaining 11 shipments to the Twin Falls Railway Company in return for a note signed jointly by the latter and by complainant. Upon failure of the makers to pay this note it was sued upon and judgment entered, and execution levied against the complainant's property. The Twin Falls Railway Company never took delivery of these 11 carloads of rails, and in August, 1916, they were sold at public auction for an amount sufficient to satisfy defendant's freight, demurrage, storage, and other charges.

The only charges in issue are the storage charges, which amounted to \$11,102. The tariff in effect when the period of storage began provided a storage charge of 1 cent per 100 pounds per day. It also provided—

In no case shall the amount so collected for storage of a less-than-carload shipment exceed the amount authorized to be charged as storage or demurrage on a carload of similar freight for the same length of time.

For the defendant it was stated that "this rule was regularly construed to include carload shipments, and no exception was made in this case." The rule quoted so clearly restricts its application to less-than-carload freight that a discussion of the erroneous construction placed upon it by the defendant is unnecessary. Effective June 1, 1914, while the shipments were still in storage, the rule was modified to read as follows:

In no case shall the amount so collected for storage of a carload or less-than-carload shipment exceed the amount authorized to be charged as demurrage on a carload of similar freight for the same length of time.

This rule is still in effect.

Following *Roy & Roy Mill Co. v. B. & M. R. R.*, 44 I. C. C., 523, and *Conf. Ruling 473*, we are of opinion that the reduced storage rate did not apply in connection with the shipments here under consideration, and that the charge of 1 cent per 100 pounds per day was legally applicable during the entire period. The shipment aggregated 1,095,500 pounds, and the amount of storage at this rate would have been, according to the defendant's statement, \$111,192.42.

The complainant urges that the storage charges collected were unreasonable considering the class of storage furnished and that they should not have exceeded \$10 per month. Several of the complainant's witnesses, engaged in the commercial storage and warehouse business in Idaho, testified that in their business they would consider from \$3 to \$5 per car per month a fair storage charge on the material

stored. For the defendant it is insisted that the charges assailed were not unreasonable, and that the charges of public warehouses fixed with a view to procuring business are not a proper measure of a railroad's storage charges, which are in the nature of a penalty and made with a view to discouraging the use of railroad premises for storage purposes. In this connection it cited *Cleveland Salt Co. v. Pennsylvania Co.*, 34 I. C. C., 638, which involved storage charges assessed at La Grange, Ga., on a carload of salt unloaded and stored on the delivering carrier's premises. In that case, recognizing a principle to which we have consistently adhered, we said:

Carriers' storage charges are intended to prevent the accumulation and congestion of freight by inducing prompt removal from the carriers' premises. They are not ordinarily imposed for profit. The charges imposed by public warehouses, therefore, afford no fair criterion of the reasonableness of carriers' charges, nor is value of the service rendered conclusive. The accomplishment of the purpose intended is the primary consideration. *Blackman v. S. Ry Co.*, 10 I. C. C., 352; *New Orleans Storage Rules & Regulations*, 28 I. C. C., 605.

The complainant concedes that carriers may with propriety take steps necessary to minimize the storage of property on their premises in order to avoid congestion of terminals and to protect the public interests, but contends that at the small western town in question there was no congestion; that the open space available for storage of the kind afforded was practically unlimited; and that the reasons ordinarily justifying the assessing of storage charges on a penalty basis were lacking. If storage charges were established upon this theory it would be necessary to adjust them with respect to the different and changing conditions at each station in the country, which would be impracticable and unnecessary.

In the case last cited and in numerous others we have approved storage charges of 1 cent per 100 pounds per day for inside storage, but for outside storage such as that afforded in the instant case we have approved a charge of \$1 per car per day, or not in excess of the demurrage charge. *Parry & Co. v. P. R. R. Co.*, 29 I. C. C., 559; *Levering Brothers v. P., B. & W. R. R. Co.*, 38 I. C. C., 349.

Following the cases last cited and upon this record, we are of opinion and find that the storage charges legally applicable on the shipments in question were unreasonable to the extent that they exceeded \$1 per car per day. The outstanding undercharges may be waived, and an order will be entered dismissing the complaint.

52 I. C. C.

No. 10141.

SHANE BROTHERS &amp; WILSON COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY.

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*Submitted October 31, 1918. Decided March 18, 1919.*

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Carload shipments of flour from points in certain western states to Philadelphia, Pa., for export, there unloaded and stored on defendant's pier, later removed by complainant, reconditioned at Philadelphia, returned to defendant's pier, and subsequently exported, found, under the particular circumstances, to have been export shipments and to have been overcharged. Reparation awarded.

*Cullom & Rinke* for complainant.

*Henry Wolf Bicklé* for defendant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

This complaint, seasonably filed, challenges defendant's application of domestic rates and terminal charges on 46 carload shipments of flour from points in certain western states to Philadelphia, Pa., in 1916, for export, and subsequently exported, and prays reparation on the basis of the rates and charges contemporaneously applicable to export shipments.

The shipments were consigned to complainant at Philadelphia during January, February, and March, 1916, with notation on the billing that they were for export. At that time complainant was the lessee of pier No. 40, in the city of Philadelphia, and was extensively engaged in the purchase and exportation of flour. When the shipments reached Philadelphia complainant was unable to unload them at its pier, owing to congestion thereon caused by delay in securing vessels for transshipment. After some negotiations the cars were unloaded on the upper deck of defendant's adjoining pier, No. 38, where the flour remained until about September of the same year. It and the sacks in which it was packed meanwhile became damaged through exposure and an accumulation of dust, soot, and cinders. Complainant thereupon surrendered the original billing, took possession of the flour, and hauled it by truck to its Philadelphia mill, 6 miles distant, where it was run through cleaning reels and

reconditioned, the sacks cleaned and repaired, and the flour resacked. It was then returned, under local billing marked "for export," over defendant's line to pier No. 38, from which it was exported in February, 1917. The local billing was surrendered to defendant's agent at the pier upon notice of arrival of the steamship. It is testified and not questioned that the identical flour and sacks removed from the pier were returned thereto, except that some torn sacks were replaced by others and some additional flour, not exceeding 50 barrels in amount or about one-thirtieth of 1 per cent of the whole, was substituted for the damaged portion not restored by the cleaning process. The defendant collected the transportation, demurrage, and storage charges provided by its domestic tariffs. These charges were higher than those provided by the export tariffs.

Complainant contends that the continuity of the through movement to the ultimate foreign destination was unbroken and that the identity and status of the shipments as export freight were never destroyed. Defendant urges that the surrender of the inbound billing and the removal of the flour from its possession consummated the original transportation transaction, and that the subsequent rail movement back to the pier intervening the exportation was a separate and independent transaction. Stress is laid upon the point that the withdrawal and reconditioning of the flour, complicated by the substitution of an approximated amount, would, under complainant's theory of the case, constitute a transit service for which no tariff provision existed.

Complainant maintains that the significance attached to the surrender of the inbound billing is unwarranted, as the inbound billing is surrendered also on delivery of shipments later exported from pier No. 40; although it appears that upon the surrender of billing covering flour delivered at that pier, warehouse receipts are now issued, under a change in practice, by the Keystone Warehouse Company, which took over complainant's lease, and that this arrangement more effectually guarantees the identity of the flour. It also is testified that on pier No. 40 complainant is permitted to repair torn sacks and to render certain services for the preservation of the flour; and the argument is made that the reconditioning of the shipments was made necessary by defendant's failure to keep them in proper condition for exportation.

Conceding that defendant's position would be sound had the flour been diverted to domestic trade or use, complainant cites the decisions of the Supreme Court of the United States, including *Texas & New Orleans R. R. Co. v. Sabine Tram Co.*, 227 U. S., 111, to the effect that the determinative factor in such cases is the essential nature of the commerce, whether domestic or export, not its mere

incidents or the accidents of billing; and it is pointed out that in *Newman Lumber Co. v. N. O. & N. E. R. R. Co.*, 47 I. C. C., 38, we upheld the export character of certain carloads of lumber shipped to New Orleans, La., for export, there switched, at the line-haul carriers' expense, to a barn rented by the shipper and at its expense unloaded and stored therein, appropriately marked for identification and held intact, and thereafter switched at the shipper's expense for delivery to the ocean carriers, and exported. Complainant insists that the present case falls within those rulings.

In further support of its contrary view defendant cites, among others touching the subject, the case of *DuMee, Son & Co. v. P. R. R. Co.*, 26 I. C. C., 33, as controlling in principle. In that case shipments of cotton to Philadelphia, usually without notation on the billing that they were for export, delivered to the complainant at uptown stations, sorted by the complainant and cleared of all damaged cotton, and then rebilled locally to the export pier for export, without tariff provision for such a transit service, were held to be local or domestic shipments to the uptown stations.

We are mindful that flour is a commodity without earmarks by which its identity could be verified independently of its containers, and that the procedure followed by the shipper in this instance would afford an opportunity for abuses. No parallel case has been brought to our attention, and what we here conclude is not to be taken as an approval of the course pursued. The necessary temporary removal should at least have been made under an arrangement which would have enabled the defendant properly to police the shipments. Nevertheless, in this instance it is not even questioned either that the initial export status of the shipments was intended by complainant to continue throughout or that the flour returned to pier No. 38 and thereafter exported was, with the exception of the relatively insignificant amount substituted, identically that removed from the pier to be reconditioned. Further, the reconditioning was unlike an ordinary transit service in that it merely repaired a damage which accrued at the pier and restored the flour to the condition in which it was there received; and complainant's action, which interrupted the progressing deterioration, was in minimization of the damages for which the defendant might be answerable, without altering the general character of the shipments.

Upon the particular facts and circumstances of record we find that the shipments were export shipments, and were overcharged accordingly. We further find that complainant made the shipments and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those that would have accrued on the basis herein found to have been appli-



cable; and that it is entitled to reparation, with interest. The amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to defendant for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

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No. 9894.

PROCTER & GAMBLE MANUFACTURING COMPANY  
*v.*  
PENNSYLVANIA RAILROAD COMPANY ET AL.

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*Submitted November 12, 1918. Decided March 7, 1919.*

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Rates on crushed stone, in carloads, from Lambertville, N. J., to Port Ivory, N. Y., found to have been and to be unreasonable. Reparation awarded.

*Hugo Ignatius* for complainant.

*George R. Allen* for defendant carriers.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation manufacturing soap and refining vegetable oils at Cincinnati, Ohio, alleges by complaint filed September 28, 1917, that the rate charged by the defendant carriers on 16 carloads of crushed stone shipped in January, 1917, from Lambertville, N. J., to Port Ivory, N. Y., was unreasonable to the extent that it exceeded 70 cents per net ton. It prays for reparation and the establishment of a reasonable rate. Rates are stated in amounts per net ton.

The shipments, aggregating 1,526,300 pounds, moved over the Pennsylvania Railroad from Lambertville to Staten Island Junction, N. J., 57 miles, and thence over the Staten Island Rapid Transit Railway to Port Ivory, 5.5 miles. Charges were collected in the sum of \$1,526.30 at the sixth-class rate of \$2 applicable under the governing official classification. On August 1, 1917, this rate was increased to \$2.30.

52 I. C. C.

Numerous rates on crushed stone which were offered by complainant and the defendant carriers for the purposes of comparison demonstrate that the rate charged was high. On behalf of defendant carriers it was stated that \$1 would be a reasonable rate for the future, but insisted that the \$2 rate was reasonable as applied to the shipments upon which reparation is sought, there having been up to that time an insufficient movement to warrant the establishment of a commodity rate. The rate charged yielded 3.2 cents per ton-mile and, based on 47.7 tons, the average loading of the cars, \$1.53 per car-mile.

In *Birdsboro Stone Co. v. P. R. R. Co.*, 49 I. C. C., 681, we had under consideration the general structure of rates on crushed stone maintained by the Pennsylvania and its affiliated lines in this territory, and prescribed, among others, rates of 56 cents for distances from 51 to 60 miles and 62 cents for distances from 61 to 70 miles. This transportation required a two-line haul but the delivering line performed little more than a switching service.

On June 25, 1918, pursuant to General Order No. 28, all interstate commodity rates on crushed stone were increased 1 cent per 100 pounds. By supplemental complaint filed September 26, 1918, the Director General was made a party defendant, and the complainant consented to the increase as provided in General Order No. 28 of the rate for the future prayed in its original complaint. The Director General answered, but no further hearing was asked or had.

We find that the rate assailed was unreasonable to the extent that it exceeded 70 cents per net ton and that the present rate is, and for the future will be, unreasonable to the extent that it exceeds or may exceed 90 cents per net ton. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$992.09 with interest.

An appropriate order will be entered.

52 I. C. C.

No. 9643.

KANSAS CITY HAY DEALERS ASSOCIATION  
v.  
CHICAGO, BURLINGTON & QUINCY RAILROAD  
COMPANY ET AL.

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*Submitted October 31, 1918. Decided March 18, 1919.*

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The combination rates in effect prior to June 25, 1918, and applied by defendants on hay moving over the Chicago, Burlington & Quincy Railroad from points in Kansas, Nebraska, Wyoming, South Dakota, Montana, and Colorado, other than Colorado common points, to Kansas City, Mo., and there reconsigned by way of that road and its connections to Chicago, Peoria, East St. Louis, Ill., Keokuk, Iowa, St. Louis, Mo., St. Paul, Minneapolis, and Duluth, Minn., Ashland, Wis., and points taking the same rates not shown to have been unreasonable or unduly prejudicial. No finding made respecting the present increased rates. Complaint and supplemental complaint dismissed.

*R. D. Sangster and J. H. Tedrow* for complainant.

*J. C. LaCoste* for Chicago, Rock Island & Pacific Railway Company.

*Kenneth F. Burgess* for Chicago, Burlington & Quincy Railroad Company.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS McCHORD, DANIELS, AND WOOLLEY.

By DIVISION 2:

The defendants' rates on hay moving over the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, from producing points on that line in Kansas, Nebraska, Wyoming, South Dakota, Montana, and Colorado, except Colorado common points, to Kansas City, Mo., and there reconsigned by way of the Burlington and its connections to Chicago, Peoria, and East St. Louis, Ill., Keokuk, Iowa, St. Louis, Mo., St. Paul, Minneapolis, and Duluth, Minn., Ashland, Wis., and points taking the same rates, are assailed herein as unreasonable and unduly prejudicial, and reasonable and nonprejudicial rates are asked. By supplemental complaint filed since the hearing the Director General of Railroads was made a party defendant. No further hearing was asked or had. After the hearing and on June 25, 1918, pursuant to General Order No. 28 of the Direc-

52 I. C. C.

tor General of Railroads, as supplemented, a general increase of approximately 25 per cent was made in rates on the railroad lines under federal control.

On the traffic in question the defendants apply combination rates composed of the local rates to Kansas City and proportional rates beyond. The Burlington does reconsign hay from and to the same points of origin and destination at St. Joseph, Mo., when that crossing is directly intermediate, and at Omaha, Nebr., when the point of origin is west of and the destination east of Plattsmouth, Nebr., under through rates which, in general, are substantially lower than the combination rates applicable through Kansas City. On shipments through Omaha there is an out-of-line haul of 20.8 miles, representing the difference between the distances from Ashland, Nebr., to Pacific Junction, Iowa, through Omaha and through Plattsmouth, respectively, but the Burlington's reconsignment tariff provides that Omaha will be treated as directly intermediate as to points east and points west of Plattsmouth. On shipments through Kansas City there is an out-of-line haul of 82.8 miles, representing the difference between the distances from St. Joseph to Cameron Junction, Mo., over the direct route and through Kansas City, respectively.

The complainant contends that this adjustment unduly prefers Omaha and St. Joseph; that where the distance through Kansas City does not exceed the distance through Omaha rates not in excess of those applicable through Omaha should be applied through Kansas City; and that where the distance through Kansas City is greater than the short-line distance through Omaha or St. Joseph the through rates, plus a charge for the excess based upon a distance scale proposed by complainant, should be applied through Kansas City. While the complainant contends that the rates assailed are unreasonable *per se*, it submitted no substantial evidence to that effect.

For the Burlington, which assumed the defense, the position is taken that the combination rates assailed are not unreasonable *per se*; that it recognizes the benefits accruing to shippers from reconsignment and permits the practice on the basis of the through rates where no out-of-line or back haul is required; and that where such extra haulage is necessary, and the competition of other carriers does not compel a different policy, it does not permit reconsignment except at the sum of the local rates to and beyond the point at which the reconsignment is effected. In justification of the waiver of the out-of-line haul on shipments through Omaha it was testified on its behalf that the principal hay-shipping territory on its line west of the Missouri River is on and north of its main line from Omaha to Grand Island, Nebr., and the line of the Union Pacific Railroad to Gering, Nebr., beyond; and that it applies the through rates by way

of Omaha in competition with the Union Pacific and the Chicago & North Western Railway, which also serve this general territory. The Chicago & North Western likewise waives an out-of-line haul through Omaha. The Burlington contends that the natural course of movement of this traffic is not through Kansas City and therefore that that point is not entitled to reconsignment at the through rates; that, as shown by the evidence, hay from important producing territories southwest of Kansas City may be reconsigned at that point to the destination territory concerned at the through rates, but if reconsigned at Omaha the combinations of locals would apply; and that Omaha might demand the application of the through rates on such traffic with as much justice as inheres in complainant's demand. It is further shown that hay from the originating territory in question may be and is reconsigned at Kansas City to points in the south and southwest to which that crossing is the natural gateway on the basis of the through rates.

For the complainant it was testified that the competition of Omaha as a market for hay from the producing territory concerned is strong and that it is increasing, and that St. Joseph is also a competitor to a certain extent. It is insisted for the Burlington that the competition of Omaha is negligible, and reference is made to the facts, shown of record, that in the years 1913, 1914, 1915, and 1916 there were reconsigned at Omaha to all points on and east of the Missouri River only 28, 58, 132, and 45 carloads of hay, respectively, while in the same years Kansas City received from 25,261 to 35,248 carloads of hay, of which from 1,079 to 2,799 carloads originated on the Burlington, and of which, it is estimated, approximately 75 per cent were reconsigned. Its position is that if it withdrew from the Omaha business Kansas City would not be benefited, because the hay would move through Omaha over the Union Pacific and the Chicago & North Western.

On brief the complainant concedes that the originating territory is practically confined to Burlington points in Nebraska, Kansas, and Colorado, excluding Colorado common points; and the record shows that as to the cited Wyoming and Montana points Kansas City was either on an equality of rates with St. Joseph and Omaha or at a disadvantage of but 2 cents per 100 pounds, which difference was apparently justified by the greater distance. No South Dakota points are specifically mentioned.

The Burlington's trackage in Kansas is comparatively small. The complainant's exhibits of rate comparisons show but one point in that state, viz, Hanover, and indicate that on shipments therefrom to Chicago the through rate is applied via St. Joseph only, while on shipments to St. Louis it is applied through both St. Joseph and Omaha. Without going into the question of the applicability, under

defendants' tariffs, of the through rates via Omaha, it suffices to say that on traffic from Kansas points to St. Louis the natural gateway is through St. Joseph, and there is no showing that shipments actually move through Omaha.

From Colorado points to Chicago the direct route is through Omaha. The distances favor Omaha as against Kansas City by more than 100 miles. From Colorado points to St. Louis the short route is through St. Joseph, but the route through Omaha is reasonably direct, being only from 55 to 67 miles, or from 6.5 to 8 per cent, longer than the St. Joseph route. The through rates apply by way of both Omaha and St. Joseph.

From a comparatively few points in Nebraska on the eastern half of the Burlington adjacent to the Kansas-Nebraska state line the short route to Chicago is through St. Joseph and, according to complainant's exhibits, the through rates are applied by way of that crossing only. But from all other Burlington stations in Nebraska, without exception so far as the record shows, the short route is through Omaha and the through rates are applied by way of that crossing. To what extent they are also applied through St. Joseph is not clearly shown of record. The distances through Omaha are shown to be from 89 to 178 miles shorter than through Kansas City. From Nebraska points to St. Louis the short route is, in general, through St. Joseph, by way of which crossing the through rates apply. They are also applicable through Omaha from practically all points except a comparatively few adjacent to the eastern half of the Kansas-Nebraska state line. From points on some of the Burlington's lines in southern Nebraska the route to St. Louis is circuitous as compared with the route through St. Joseph, the difference ranging as high as 67 miles, or 11 per cent, but there is no showing that the traffic actually moves through Omaha from such points. In general, the distance through Kansas City is not much greater than through Omaha and in some instances it is less.

The complainant rests its case largely upon the fact that from practically all the points of origin the Burlington maintains equal rates to St. Joseph and Kansas City, and that from those crossings eastward the haul from Kansas City is but 19 miles greater than from St. Joseph. It observes that but for this rate parity "the case might stand on altogether a different footing." Certainly, that line should not be penalized for having placed Kansas City on an equality with St. Joseph in the matter of rates on inbound local business; and, obviously, on through shipments the actual out-of-line haul is not merely the additional 19 miles from Kansas City but the total 82-mile movement out of the direct line from point of origin to ultimate destination.

The complainant cites *Kornfalfa Feed Milling Co. v. A., T. & S. F. Ry. Co.*, 38 I. C. C., 307, in which the Burlington was found to discriminate against Kansas City in refusing to accord at that point transit service on refuse sirup from points in Colorado and Nebraska while providing for that service at Omaha. For the Burlington that case is distinguished from the one under consideration in three particulars: (1) That St. Louis was the only point of ultimate destination; (2) that Omaha was there shown to be an active competitor of Kansas City, whereas here the competition of Omaha as a hay market is shown to be negligible; and (3) that the carrier competition at Omaha shown on this record was not touched upon in that case. Upon the broader record in *Kansas City Hay Dealers Asso. v. C. G. W. R. R. Co.*, 49 I. C. C., 372, we considered the refusal of the defendants therein to apply the through rates on shipments of hay from the Colorado common-point rate group to Kansas City over the Burlington, thence by way of the Chicago, Rock Island & Pacific, the Chicago, Milwaukee & St. Paul, or the Chicago Great Western to points between the Missouri River and the Illinois-Indiana state line, and said:

The evidence of record justifies the additional routing, which the complainants seek, only where the distances are in favor of Kansas City or where they are no greater through Kansas City than through the other gateways. To compel the application of short-line rates over indirect and longer routes, merely as a means of providing a channel of doubtful benefit to comparatively few shippers, would lay an unnecessary expense upon the railroads against the interest of the public as a whole. When joint rates that are neither unreasonable nor unduly prejudicial are maintained over direct routes adequate

the reasonable requirements of the public, and carriers  
form wasteful transportation by maintaining the  
Kansas City would not be circuitous routes.

through Omaha over the Union Pacific and prior to June 25, 1918, Western.

unduly prejudicial.  
On brief the complainant concedes that the origin of the present in- is practically confined to Burlington points in Nebraska.

Colorado, excluding Colorado common points; and the rate Burlington that as to the cited Wyoming and Montana points Kansas defendant's either on an equality of rates with St. Joseph and Omaha, the terri- disadvantage of but 2 cents per 100 pounds, which difference Kansas apparently justified by the greater distance. No South Dakota would. are specifically mentioned.

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that state, viz, Hanover, and indicate that on shipments therefrom  
to Chicago the through rate is applied via St. Joseph only, while  
shipments to St. Louis it is applied through both St. Joseph and  
Omaha. Without going into the question of the applicability, unde

No. 9739.  
**LARKIN COMPANY ET AL.**  
*v.*  
**ERIE RAILROAD COMPANY ET AL.**

*Submitted December 26, 1918. Decided March 18, 1919.*

1. Lamps, complete with globes or shades of the framed-glass type, with the glass panels removed from the frames and packed separately in the same outer shipping container, held to have been within the official classification description of "Globes or Shades, Lamp: Coppered, leaded or framed glass" during the period April 1, 1915, to November 1, 1916.
2. Increased ratings in the official classification on lamps, complete with globes or shades, not found justified and ratings not in excess of one and one-fourth times first class, less than carloads, and third class, minimum 14,000 pounds, subject to rule 27 of the classification, carloads, found reasonable on oil, gas, and electric lamps with globes or shades of the framed-glass type with the glass in the frames or detached and in the same outer container, and third class, minimum 14,000 pounds, subject to rule 27 of the classification, carloads, on lamps complete with globes or shades of one piece of glass. Reasonable maximum ratings prescribed.

*M. S. Wheeler, J. E. Wilson, Littleford, James, Ballard & Frost, Francis B. James, E. E. Williamson, Wayne P. Ellis, and Ewing H. Scott* for complainants.

*Stewart C. Pratt and D. T. Lawrence* for defendant carriers.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

**BY DIVISION 1:**

The official classification ratings on portable and nonportable oil, gas, and electric lamps, complete, with globes or shades in the same outer shipping container, are assailed herein as unreasonable and unduly prejudicial and the establishment of specific carload and less-than-carload ratings prayed. We are also asked to determine the official classification rating legally applicable between April 1, 1915, and November 1, 1916, on portable and nonportable oil, gas, and electric lamps, complete, with globes or shades of the framed-glass type, the glass panels of which were removed from the frames and packed separately in cartons in the same outer shipping container. By supplemental complaint filed November 7, 1918, the Director



General of Railroads was made a party defendant. The answer of the Director General denies that the complainants are entitled to relief and prays that the original and supplemental complaints be dismissed. No further hearing was asked or had.

Complainants' shipments consist of portable and nonportable oil, gas, and electric lamps, complete, with globes or shades, and include ceiling and desk lamps. When shipped the lamps are taken apart and packed so as to combine maximum weight density with minimum liability to damage. Lamps with single-piece glass shades are packed with the metal parts separated from the glass shades by excelsior, straw, or paper, and those with globes or shades of the framed-glass type with removable glass panels are partially knocked down, the lamp standards, frames, and detached glass being packed separately in cartons, protected by excelsior, straw, or paper, and then placed in the same outer wooden box or crate for shipment. The glass panels of one type are placed in a carton with corrugated paper between them and the metal frames and parts are wrapped in paper and packed with excelsior, straw, or paper.

The complainants group lamp globes or shades as follows: (1) Single pieces of mouth-blown glass; (2) metal frames with removable panels of rolled glass, known as cathedral glass, held in the metal frames by pliable metal clips; (3) metal frames with glass panels, coppered, leaded, or permanently secured; and (4) metal frames with irregular pieces of glass, commonly called mosaic work, permanently coppered or leaded in the frames. They do not handle expensive lamps with detachable panels, nor with leaded, coppered, or permanently framed shades, but only those with shades of the types embraced within the first and second groups, principally with globes or shades of the framed-glass type with removable panels.

Between April 1, 1915, and November 1, 1916, complainants received shipments of lamps with globes or shades of the framed-glass type with the glass panels removed from the frames and packed separately in the same outer container, on which the carriers attempted to collect charges at the double first-class rates under the following item deemed applicable under rule 15-A of the classification to the highest-rated articles in the package:

Glassware, other than cut:

	L. C. L.	C. L.
Globes or Shades, Lamp, coppered, leaded or framed glass, packed in barrels or boxes-----		D1
Globes or Shades, Lamp, Glass, not otherwise indexed by name: Packed in barrels or boxes, or in crates with apertures not exceeding 2 inches in width-----		1
In packages named, c. l. minimum weight 12,000 pounds. (Sub- ject to rule 27)-----		R25

52 I. C. C.

The second of these items on glass globes or shades has been maintained since its publication on July 1, 1914, substantially without change. The first item was changed on November 1, 1916, as follows:

Glassware, other than cut:

L. C. L. C. L.

Globes or Shades, Lamp:

Coppered, leaded, or permanently framed glass, packed in barrels or boxes.....	D1
Framed glass, not otherwise indexed by name, see note 4-A, packed in barrels or boxes.....	1½

NOTE 4-A.—Rating applies on globes or shades of the framed-glass type with glass in frames or detached and in the same outer package.

No further material change has been made in this item, and it is still in effect. Complainants refused to pay more than the first-class rates, insisting that the item naming the ratings on "framed glass" was inapplicable, as the glass panels were detached from the metal frames of the globes or shades when shipped; that the shades were not covered by the description "framed glass"; and that these globes or shades were embraced within the classification description: "Globes or shades, lamp, glass, not otherwise indexed by name," rated first class, less than carloads, and rule 25, carloads.

The witness for the Official Classification Committee testified that for a number of years prior to January 1, 1914, small, inexpensive globes and shades were shipped with lamps as component parts and accorded the same rating. Upon investigation it appeared that, due to the growth and evolution of the lamp industry, large, bulky, fragile, and more expensive globes and shades were being shipped as parts of lamps, which reduced the weight density of the shipments to a point not contemplated by the ratings previously provided for the complete lamps; that the item covering "Globes or Shades, Lamp: Coppered, leaded, or framed glass" was established July 1, 1914, published upon the recommendation of the committee on uniform classification and was intended to cover globes or shades of the framed-glass type with detachable panels; that it subsequently developed that in instances where these globes or shades were shipped with other parts of lamps the shippers often claimed the benefit of lower ratings contemporaneously in effect prior to April 1, 1915, on "lamps, n. o. s.," and in this manner secured advantage of the first-class and third-class ratings on lamp globes and shades, less than carloads and carloads, respectively, whereas those articles would be rated double first class, any quantity, if shipped separately; and that the qualifying phrase "without globes or shades" was added to the classification item on "lamps, n. o. s." April 1, 1915, to rectify this situation. It was further explained on behalf of the classification

52 L. C. C.

committee that the insertion of the word "permanently" before the words "framed glass" in the item effective November 1, 1916, was for the express purpose of avoiding controversy, and can not be construed as an admission of doubt as to the application of the former description "framed glass" to lamp globes or shades of the framed-glass type with glass panels removed from the frames and packed separately in the same outer container.

We find that the double first-class rating in effect between April 1, 1915, and November 1, 1916, on "Globes or Shades, Lamp: Coppered, leaded, or framed glass" was legally applicable to complainants' shipments.

For many years prior to April 1, 1915, the official classification carried the following item covering portable and nonportable oil, gas, and electric lamps, with or without shades:

Lamps:	L	C. L.	C. L.
N. o. s., in crates, boxes, or bbls. (c. l. min. wt. 14,000 lbs.)			
(Subject to rule 27)-----	1		3

On April 1, 1915, this item was amended to read:

Lamps:	L	C. L.	C. L.
Lamps, n. o. s., without globes or shades, in barrels, boxes, or crates. (c. l. min. wt. 14,000 lbs.)			
(Subject to rule 27)---	1		3

and the following item was added:

Lamps:	L	C. L.	C. L.
Electric—			
Electric lamps, not otherwise indexed by name, without globes or shades, packed in barrels or boxes-----	1		—

On February 1, 1917, the carload rating was withdrawn and the following item added:

Lamps:	L	C. L.	C. L.
Oil lamps, not otherwise indexed by name, without globes or shades—			
Packed in crates-----	1		—
Packed in barrels or boxes-----	1		—
In packages named, c. l. min. wt. 14,000 lbs. (Subject to rule 27)-----	—		3

Since April 1, 1915, the official classification has not carried a specific item on lamps complete with globes or shades of the framed-glass type, but rule 15-A of the classification provided and provides that "the charge for a package containing freight of more than one class shall be at the rating provided for the highest-classed freight contained in the package."

Complainants ask for the establishment of ratings of first class, less than carloads, and third class, carloads, minimum 14,000 pounds, on lamps complete with globes or shades, whether the globes

52 I. C. C.

or shades consist of one piece of glass or of the framed-glass type with the removable glass either in the frames or detached and in the same outer package. The official classification ratings and rules are also attacked as being unreasonable in that no specific carload and less-than-carload ratings are provided for lamps, complete with globes or shades, and as being unduly prejudicial in favor of other complete articles upon which such ratings are provided. No substantial evidence was adduced in support of the allegation of undue prejudice.

By the classification changes effective April 1, 1915, the ratings previously applicable on lamps, complete with globes or shades of coppered, leaded, or framed glass, were changed from first class, less than carloads, and third class, carloads, minimum 14,000 pounds, subject to rule 27, to double first class, any quantity. The less-than-carload rating on lamps with globes or shades of one piece of glass remained at first class, but the carload rating was increased to rule 25, which is 15 per cent lower than second class but not less than third class, and the minimum was reduced from 14,000 to 12,000 pounds. As hereinbefore shown, a rating of one and one-half times first class, any quantity, was specifically provided, effective November 1, 1916, on lamps with globes or shades of the framed-glass type with the glass panels either in the frames or removed and in the same outer shipping container. The statute casts upon the defendants the burden of justifying the increased ratings.

In support of the contention that the present rating, under the highest-rated article rule of the classification, of one and one-half times first class on lamps, complete with globes or shades of the framed-glass type with the glass panels either in the frames or detached but in the same outer container, is unreasonable, complainants cite the first-class rating in effect for a number of years prior to April 1, 1915, and show that the selling prices of lamps of this type handled by them range from \$1.25 to \$15 each; that the purchase price in 1916 averaged \$3.46 per lamp; that the average value per car was \$1,305.50, and the average weight per carload 13,203 pounds. The average weight and selling value per cubic foot of the packages handled by complainants containing lamps with one-piece glass shades are 7.74 pounds and \$2.41, respectively, and of the packages handled by complainants containing lamps with globes or shades of the framed-glass type with glass panels removed, 7.89 pounds and \$1.60, respectively. With reference to the cancellation of the carload rating complainants contend that it is not in accordance with sound classification principles to supersede a rating on a complete article by ratings on the several parts

thereof. It is also contended that the volume of movement into and out of their plants has been constantly increasing during the past 14 years, 109 carloads having been received at Buffalo in 1916; that no special equipment is required for this traffic; and that loss-and-damage claims are negligible. The weights and values of lamps, globes, and shades are compared with those of gas and oil heaters and candelabra, which enjoy lower ratings. These comparisons are restricted to the type of articles handled by complainants.

In justification of the increased ratings resulting from the changes in the classification items in question it was explained for the defendants that the principal reason for changing the rating on lamps with globes or shades of the framed-glass type with removable glass panels was that the changed weight density did not warrant application of the first-class rating, and that complainants had submitted no information or protest to the classification committee until after the changes had become effective, although advised of hearings on the proposed changes and invited to submit their views. Complainants' evidence as to the weight density was corroborated by the defendants. No effort was made to justify the withdrawal of the carload rating on lamps.

The defendants' witness explained that globes or shades of coppered, leaded, or permanently framed-glass type are more valuable than other types of globes or shades; and described in a general way three lamps with globes or shades of the framed-glass type with removable glass panels, valued at \$32, \$38, and \$50 each, but furnished no data as to the extent these and more valuable lamps enter into transportation.

Upon the present record we find that the defendants have not justified the increased ratings assailed, and that the present ratings applicable under the official classification on oil, gas, and electric lamps, complete with globes or shades of the framed-glass type, with glass in the frames or detached and in the same outer shipping container, are, and for the future will be, unreasonable to the extent that they exceed or may exceed one and one-fourth times first class, less than carloads, and third class, carloads, minimum 14,000 pounds subject to rule 27; and that the present carload rating applicable under rule 15 of the classification on lamps, complete with globes or shades of one piece of glass, is, and for the future will be, unreasonable to the extent it exceeds or may exceed third class, minimum 14,000 pounds subject to rule 27. As the first-class rating sought by complainants on lamps complete with globes or shades of one-piece glass, in less than carloads, is now in effect under rule 15, no finding or order with reference thereto is necessary.

An appropriate order will be entered.

No. 9749.

## WEST VIRGINIA RAIL COMPANY

v.

## SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted November 17, 1918. Decided March 17, 1919.*

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Rates on scrap steel rails, in carloads, from New Orleans, La., to Huntington, W. Va., found to have been unreasonable to the extent that they exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Lexington, Ky. Reparation awarded.

*Willis H. Fowle and W. P. Tingley* for complainant.

*R. Walton Moore and D. Lynch Younger* for defendant carriers.

*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

## DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

The complainant, a corporation engaged in the manufacture and sale of light steel rails at Huntington, W. Va., alleges by complaint filed June 22, 1917, that the defendants' rates on scrap steel rails, in carloads, from New Orleans, La., to Huntington, were unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section to the extent that they exceeded the aggregate of the intermediate rates to and from Lexington, Ky. Reparation is asked on all shipments moving during the statutory period. By supplemental complaint filed on September 21, 1918, after the hearing the Director General of Railroads was made a party defendant. He answered, but no further hearing was asked or had. Rates are stated in amounts per net ton unless otherwise specified.

Huntington, on the south bank of the Ohio River, is 161 miles southeast of Cincinnati, Ohio, and 139 miles east of Lexington, by way of the Chesapeake & Ohio Railway. The shortest practicable route from New Orleans to Huntington is via the Southern Railway system to Lexington and the Chesapeake & Ohio beyond, 886 miles. This was the route traversed by the shipments. By way of Cincinnati and the Chesapeake & Ohio beyond, the distance is 987 miles, and via the Southern Railway system to Johnson City, Tenn., Carolina, Clinchfield & Ohio Railway to Elkhorn City, Ky., and the Chesapeake & Ohio beyond, 965 miles. The same rates apply over all routes except in connection with the Carolina, Clinchfield & Ohio.

The complainant's shipments consisted of worn or obsolete steel rails, not suitable for relaying, which it manufactures into new, light steel rails by a rerolling process. The general basis of rates on scrap steel rails from New Orleans to points in central freight association territory is the combination on Ohio River crossings. Prior to the filing of the complaint the rates from New Orleans to Huntington were made the same as to Pittsburgh, Pa., which is 254 miles farther distant, the Pittsburgh rate being based on the combination of the rates to and from Cincinnati. The rate to Cincinnati was and is applied to Lexington, and the rate from Lexington to Huntington on traffic from New Orleans was and is the same as from Cincinnati. Prior to December 15, 1916, the through rate to Huntington was \$4.91. On that date it was increased to \$5.96. Prior to May 26, 1915, the aggregate of the intermediate rates to and from Cincinnati or Lexington was \$4.28, consisting of a rate of \$3.10 to Cincinnati or Lexington and a rate of \$1.32 per long ton, equivalent to approximately \$1.18 per net ton, beyond. On May 26, 1915, the rate to Cincinnati and Lexington was increased to \$3.80, making the aggregate of the intermediate rates \$4.98, and removing the former departure from the provisions of the fourth section which was protected by an appropriate fourth section application. But the increase in the through rate to \$5.96 created a new departure which was unauthorized by us and unlawful. On January 2, 1918, this violation was removed by cancellation of the through rate and application of the combination on Cincinnati or Lexington. Since that date there have been various changes in the rates, but the through rate has not exceeded the aggregate of the intermediates.

The complainant contends that Huntington should be accorded the same rate as Cincinnati, and that any rate in excess of \$3.80 was unreasonable. It points to Huntington's location on the south bank of the Ohio River and to the fact that the short-line distance from New Orleans to Huntington is only 60 miles greater than to Cincinnati. The rate of \$5.96 and the ton-mile earnings thereunder of 6.73 mills, based on the short-line distance, are compared by it with the rates from New Orleans to 44 points, most of which are in central freight association territory, which averaged \$5.24 for an average distance of 1,025 miles, and the ton-mile earnings thereunder, which averaged 5.10 mills. The rate of \$4.98 from New Orleans to Huntington, for the 886-mile haul by way of Lexington, yielded 5.62 mills per ton-mile. The complainant also cited, by way of comparison, the rates from Mobile, Ala., Gulfport, Miss., and Pensacola, Fla., to numerous points in central freight association territory. For many years these rates have been made the same as from New Orleans, and, as the distances from these points are in most cases somewhat less

than from New Orleans, the ton-mile earnings are necessarily a little higher. There were also cited by complainant rates from four points in Louisiana to Chicago, Ill., and St. Louis, Mo., which yielded ton-mile earnings averaging 4.4 mills; also a rate of \$3.214 on new steel rails from Huntington to New Orleans. It was testified for the defendants that the circumstances and conditions surrounding the rates to Chicago and St. Louis and the rate on new steel rails to New Orleans were substantially different from those affecting the rates assailed.

For the defendants it was contended that, unlike Cincinnati, Huntington is not an Ohio River gateway, and that the rates assailed were properly constructed and not unreasonable. Also that the \$3.80 rate from New Orleans to Cincinnati, which was increased to that figure following *Rates on Scrap Iron from Gulf Ports*, 33 I. C. C., 668, was abnormally low, being depressed by potential water competition and by the influence of active water competition between Memphis and St. Louis, to which the rates to Cincinnati are related. The price of scrap steel rails, defendants showed, has increased over 300 per cent in the last three years.

The following comparisons were submitted on their behalf:

From—	To—	Distance.	Rate.	Ton-mile earnings.
		<i>Miles.</i>		<i>Mills.</i>
New Orleans.....	Cincinnati.....	826	\$3.80	4.60
Various other southern points.....	do.....	1550	13.35	16.42
Cincinnati.....	Huntington.....	161	1.18	7.33
do.....	Various points in C. F. A. territory.....	1283.5	11.80	16.62
New Orleans.....	Huntington.....	886	4.98	5.62
do.....	25 points in C. F. A. territory.....	1989	15.01	15.07
St. Louis.....	Various points in trunk line territory..	1864	15.55	16.43

<sup>1</sup> Average.

In *West Virginia Rail Co. v. B. & O. R. R. Co.*, 50 I. C. C., 318, it was contended that Huntington is an Ohio River crossing and that the rate on new rails from Huntington to Birmingham, Ala., should not be higher than from Cincinnati. We found that the rate of \$6.18 per long ton was unreasonable to the extent that it exceeded \$5.85, the latter rate being based on a differential of \$1.35 over the rate from Cincinnati. In that case we referred to the unfavorable operating conditions on the Chesapeake & Ohio's line between Lexington and Huntington, the traffic in that case, as in this, moving by way of Lexington.

The complainant further contends that in the purchase of scrap steel rails it is forced to compete with manufacturers and dealers at Cincinnati, Louisville, Ky., Chicago, Milwaukee, Wis., and Buffalo, N. Y., all of which it alleges have relatively lower rates from

52 I. C. C.



New Orleans than apply to Huntington. For the defendants it is contended that the rates to Cincinnati, Louisville, Chicago, and Milwaukee are affected by transportation conditions different from those surrounding the rate to Huntington.

The complainant suggested that the government had fixed a uniform price for scrap steel rails delivered at destination and that it was impossible for complainant to purchase scrap rails at New Orleans when the seller could get the same price at a point having a lower freight rate. It is apparent that this condition, which might affect many other points, could not be remedied by us.

Upon this record we are of opinion and find that Huntington was not entitled to the Cincinnati rate, but that the rates assailed were unreasonable to the extent that they exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Lexington, Ky.; that during the period of two years prior to the filing of the complaint herein complainant made shipments of scrap steel rails from New Orleans to Huntington and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and the complainant should prepare a statement in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

52 I. C. C.

No. 9992.

AETNA EXPLOSIVES COMPANY

v.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET AL.

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Submitted November 8, 1918. Decided February 26, 1919.

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Rates legally applicable on sulphuric acid in tank-car loads from various points in Mississippi, Alabama, and Georgia to Copperhill, Tenn., found to have been and to be unreasonable. Reasonable maximum rates prescribed and reparation awarded.

*George G. Reynolds and Winthrop & Stimson* for complainants.

*R. Walton Moore, Alex. M. Bull, and William Burger* for defendants.

*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

The complainants are George C. Holt and Benjamin B. Odell, as receivers of the Aetna Explosives Company, a corporation engaged in the manufacture of explosives. By complaint filed December 3, 1917, they alleged that the rates charged on sulphuric acid, in tank-car loads, shipped from various points in Mississippi, Alabama, and Georgia to Copperhill, Tenn., between December 2, 1915, and February 16, 1916 inclusive, were unreasonable, and asked for reparation and the establishment of reasonable rates. Rates are stated in amounts per net ton, except as otherwise noted, and are those in effect prior to June 25, 1918, on which date they were increased 25 per cent under General Order No. 28, issued by the Director General of Railroads, who since the hearing has been made a party defendant by supplemental complaint attacking the rates so increased. No further hearing was asked or had.

52 I. C. O.

The details concerning the shipments follow; rates stated in cents per 100 pounds:

From—	Number of shipments.	Rates alleged to have been charged.	Sixth-class rates applicable.	From—	Number of shipments.	Rates alleged to have been charged.	Sixth-class rates applicable.
		<i>Cents.</i>	<i>Cents.</i>			<i>Cents.</i>	<i>Cents.</i>
Gulfport, Miss.....	7	83	62	Montgomery, Ala.....	2	54	51
Do.....	1	78	149	Do.....	2	51	51
Do.....	1	75	149	Troy, Ala.....	9	76.8	70
Do.....	2	49	149	Do.....	4	71	70
Meridian, Miss.....	5	55	65	Atlanta, Ga.....	5	33	33
Roanoke, Ala.....	3	67	64	Do.....	1	35	33
Do.....	2	68	64	Valdosta, Ga.....	6	78	78
Talladega, Ala.....	3	35	53				

<sup>1</sup> In effect on and after Jan. 1, 1916.

One shipment weighed 59,000 pounds, four slightly in excess of 80,000 pounds, and the remainder 90,000 pounds or more, one car containing 115,760 pounds. The average carload weight of sulphuric acid is about 100,000 pounds. The charges collected ranged from about \$380 to \$856.44 per car. The value of 60 degree sulphuric acid, with which we are here concerned, is said to be about \$5 per ton in normal times. Due to the war its price increased to \$30 or \$35 per ton in December, 1915, but had decreased to \$12.50 in the summer of 1916.

The complainants contend that the rates legally applicable were unreasonable to the extent that they exceeded (1) an unpublished distance scale, hereafter referred to as the southern scale, which the southern carriers evolved from the rates prescribed from Copperhill to various points in the Carolinas and Georgia and to Jacksonville, Fla., in *International Agricultural Corporation v. L. & N. R. R. Co.*, 22 I. C. C., 488, the history of which is detailed in *Sulphuric Acid from New Orleans, La.*, 42 I. C. C., 200; (2) rates in the opposite direction; and (3) rates subsequently established over the route of movement; and reparation is sought on basis of the lowest of these rates, which are shown below, together with the applicable rates reduced to amounts per ton.

To Copperhill, from—	Miles.	Rates applicable.	Rates on basis of southern scale.	Rates subsequently established.	Rates in opposite direction.
Gulfport.....	542	\$12.40	\$3.90	<sup>1</sup> \$4.94	\$2.80
Do.....	542	<sup>2</sup> 9.80			
Meridian.....	435	13.00	3.30	<sup>3</sup> 3.50	2.90
Roanoke.....	249	12.80	2.15	<sup>1</sup> 2.50	2.50
Talladega.....	244	10.60	2.15	<sup>1</sup> 4.15	2.00
Montgomery.....	291	10.20	2.50	<sup>1</sup> 2.50	2.00
Troy.....	319	14.00	2.62	<sup>1</sup> 3.00	3.00
Atlanta.....	116	6.60	1.75	<sup>1</sup> 1.75	1.50
Valdosta.....	356	15.60	2.85	<sup>3</sup> 3.25	( <sup>4</sup> )

<sup>1</sup> Established Mar. 11, 1916.

<sup>2</sup> In effect on and after Jan. 1, 1916.

<sup>3</sup> Established Apr. 29, 1916.

<sup>4</sup> No commodity rate in effect.

The earnings under the rates legally applicable ranged from approximately 18 to 57 mills per ton-mile, averaging about 41 mills. Under the southern scale of rates, the earnings would have ranged from 7 to 15 mills per ton-mile, averaging about 9.4 mills; under the commodity rates subsequently established the earnings would have been somewhat higher than under the southern scale; and under the commodity rates in the opposite direction they would have ranged from 7 to 13 mills per ton-mile, with an average of about 8 mills.

Effective January 10, 1916, joint rates were published from nearly all producing points in the south to many northern points, based on the southern scale of rates to Richmond, Va., or Cincinnati, Ohio, and the northern lines' sixth-class specifics beyond Richmond or their fifth-class proportionals beyond Cincinnati. In the case last cited, which had to do with proposed changes in the rates from New Orleans, La., published to become effective March 30, 1916, we criticized the construction of the southern scale in certain particulars, but found that the proposed increased rates which exceeded those that would have resulted from the application of that scale, had not been justified. The proposed rate from New Orleans to Hopewell, Va., did not exceed that basis and was found justified.

We have repeatedly held, and the complainants concede, that the voluntary reduction of a rate does not of itself constitute a basis for an award of reparation. As there had been no carload movement of sulphuric acid from and to the points named prior to that under consideration, no occasion had arisen for a commodity rate.

Concerning the rates in the opposite direction, we said in *Sulphuric Acid from New Orleans, La., supra*, at pages 204 and 205:

Rates from Copperhill upon a somewhat lower basis than from other points in the southeast may be justified because of peculiar conditions that obtain at Copperhill. *Graselli Chemical Co. v. L. & N. R. R. Co.*, 40 I. C. C., 109. Acid is produced there in large quantities by copper companies from the fumes generated in their copper-smelting operations. The fumes were once allowed to escape, but were so destructive to vegetation in the vicinity that it became necessary to confine and consume them in some way or to close down the smelters in obedience to a federal injunction. The result was the conversion of the fumes into sulphuric acid. Rates on the acid were established by the Louisville & Nashville Railroad, which served the copper companies' plants, in order that the smelters might be kept in operation and the tonnage which they contributed to the railroad saved. These conditions, however, do not warrant the discrepancies in rates that would result if the rates proposed should become effective.

For the defendants the following rates were cited:

From—	To—	Miles.	Rate.
Cleveland, Ohio.....	Batavia, N. Y.....	219	\$3.20
Youngstown, Ohio.....	Mount Union, Pa.....	225	4.20
Columbus, Ohio.....	Burnett, Ind.....	249	3.33
Cleveland, Ohio.....	Rochester, N. Y.....	251	3.20
Canton, Ohio.....	Mount Union, Pa.....	261	4.50
Grasselli, Ind.....	Cleveland, Ohio.....	341	3.42
Youngstown, Ohio.....	Carneys Point, N. J.....	445	5.40
Canton, Ohio.....	Elizabeth, N. J.....	524	5.10
Do.....	Baltimore, Md.....	540	4.50

These rates are 90 per cent of the fifth-class rates, which is the usual basis for rates on sulphuric acid between points in central freight association territory. But it was shown in *Acid between Illinois Points*, 49 I. C. C., 498, that in numerous instances rates were maintained upon a lower basis, sometimes as low as 40 per cent of fifth class. In that case we found that the carriers had justified an increase in the rate on sulphuric acid between Chicago, Ill., and St. Louis, Mo., 284 miles, from \$1.48 to \$2.

We find that the rates legally applicable were unjust and unreasonable to the extent that they exceeded the following amounts which we find would have been just and reasonable rates based on the application of the southern scale, modified in conformity with *Sulphuric Acid from New Orleans, La., supra*: \$1.75 per net ton from Atlanta, \$2.15 per net ton from Roanoke and Talladega, \$2.50 per net ton from Montgomery, \$2.86 per net ton from Valdosta, \$2.62 per net ton from Troy, \$3.30 per net ton from Meridian, and \$3.85 per net ton from Gulfport; and that the rates now in effect are, and for the future will be, unjust and unreasonable to the extent that they exceed or may exceed the rates so found just and reasonable by more than 25 per cent. We further find that the Aetna Explosives Company made shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found to have been reasonable; and that complainants George C. Holt and Benjamin B. Odell, as receivers of the Aetna Explosives Company, are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and the complainants should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

52 I. C. C.

No. 10162.

E. I. DU PONT DE NEMOURS POWDER COMPANY  
v.  
DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

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*Submitted September 23, 1918. Decided February 26, 1919.*

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Rate on nitrating acid, in carloads, from Louviers, Colo., to Hopewell, Va., found to have been unreasonable. Reparation awarded.

*V. S. Thomas and Harvey S. Farrow* for complainant.

*E. N. Clark, Henry G. Herbel, and James M. Chaney* for defendant lines. -

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

By complaint, seasonably filed, the complainant, a corporation engaged in the manufacture of explosives, with plants at Louviers, Colo., and Hopewell, Va., seeks reparation on 13 tank-car loads of nitrating acid shipped in May, June, and July, 1915, from Louviers to Hopewell, alleging that the rate charged was unreasonable. By supplemental complaint filed September 14, 1918, after the hearing the Director General of Railroads was made a party defendant. He answered, but no further hearing was asked or had. Rates are stated in amounts per 100 pounds.

The shipments, aggregating 1,090,480 pounds, were consigned by complainant to itself at Hopewell. They moved over the Denver & Rio Grande and the Missouri Pacific railroads to St. Louis, Mo., 1,003 miles, the Terminal Railroad Association of St. Louis at that junction, and beyond over the Baltimore & Ohio and the Norfolk & Western railroads. Charges were collected in the sum of \$12,431.46, at the applicable combination rate of \$1.14, made up of the fourth-class rate of 80.5 cents from Louviers to St. Louis, governed by the western classification, and the fifth-class rate of 33.5 cents from St. Louis to Hopewell, governed by the official classification.

Nitrating acid contains approximately 80 per cent of sulphuric acid and 20 per cent of nitric acid, and is used in the manufacture of explosives. Both sulphuric and nitrating acids, in carloads, are rated fourth class by the western classification and fifth class by the

official classification. At the time of movement a commodity rate of 43 cents applied on sulphuric acid, in carloads, over the route of movement from Louviers to St. Louis, and on July 1, 1916, it was also made applicable on nitrating acid. No complaint is made against the component from St. Louis to Hopewell, and reparation on the basis of the 43-cent rate subsequently established from Louviers to St. Louis is the only relief sought.

Both nitrating and sulphuric acids are corrosive liquids, but are not classed as explosives. They move in bulk in tank cars and one involves no greater transportation risk than the other. While the 20 per cent nitric acid content makes nitrating acid of somewhat greater value than sulphuric acid, carriers throughout the territory in question have generally recognized the two acids as comparable commodities by according them the same classification rating, and the same commodity rates when published.

While admitting that the two acids generally move at the same rates, the defendants' witness testified that the shipments in question were the first, and apparently the only ones, ever made from Louviers to Hopewell and were the result of the demand due to war conditions; that commodity rates are published more generally on sulphuric acid than on nitrating acid because of the greater volume of movement of the former, due in part to its extensive use in the manufacture of fertilizer; and that nitrating acid has a higher value than sulphuric acid. It is contended, therefore, that the class rate assailed was not unreasonable. It may be noted that it was admitted for the defendants that a movement of sulphuric acid from Colorado to St. Louis would also be unusual.

In comparison with the 80.5-cent rate assailed, which yielded 16 mills per ton-mile, the complainant cited a rate of 10 cents, increased to 15 cents at the time of the hearing, on both sulphuric and nitrating acids, applicable over the Missouri Pacific from Omaha, Nebr., to St. Louis, 483 miles, yielding a ton-mile revenue of 4.14 mills; a rate of 28.5 cents on both acids, concurred in by the Missouri Pacific, from Barksdale, Wis., to Atlas, Mo., 861 miles, yielding a ton-mile revenue of 6.6 mills; and a rate of 75 cents on both acids from Pacific coast points to Atlantic seaboard territory, including Hopewell. The 43-cent rate on sulphuric acid from Louviers to St. Louis yielded a ton-mile revenue of 8.57 mills. These rates have since been increased under General Order No. 28 of the Director General.

We find that the through rate assailed was unreasonable to the extent that the component from Louviers to St. Louis exceeded 43 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been

damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation from the Denver & Rio Grande Railroad Company and its receivers and the Missouri Pacific Railroad Company in the sum of \$4,089.29, with interest.

An appropriate order will be entered.

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No. 10214.

NEW ORLEANS, NATALBANY & NATCHEZ RAILWAY  
COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY.

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*Submitted February 25, 1919. Decided March 18, 1919.*

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Complainant not entitled to a divisional allowance in connection with certain shipments of hardwood logs which originated at Grangeville Junction, La., on the New Orleans, Natalbany & Natchez Railway, and moved from Natalbany, La., to Memphis, Tenn., over the rails of the Illinois Central Railroad. Complaint dismissed.

*Hermon Dean and T. Brady, jr., for complainant.*

*R. V. Fletcher and R. Walton Moore for defendant.*

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

The New Orleans, Natalbany & Natchez Railway Company, hereinafter called the Natalbany Railway, is before the Commission in this proceeding claiming an allowance from the Illinois Central Railroad of 3 cents per 100 pounds in connection with the transportation of 100 cars of hardwood logs which moved between November 24, 1914, and April 24, 1915, from Grangeville Junction, La., to Memphis, Tenn. Details of the shipments were filed on September 29, 1916, and February 7, 1917. The claim is based on the supplemental order of July 29, 1914, in *The Tap Line Case*, 31 I. C. C., 490, which prescribed the maximum divisions out of joint rates on interstate shipments of lumber and forest products that might lawfully be paid by the trunk lines to their tap-line connections.

52 I. C. C.



The shipments were delivered to the Natalbany Railway at Grangeville Junction by the Natalbany Lumber Company and moved on local bills of lading to Natalbany, La. For this movement the lumber company paid the Natalbany Railway its local rate of  $3\frac{1}{2}$  cents per 100 pounds. There were no joint rates on lumber or logs from points on the Natalbany Railway to Memphis, and upon their arrival at the junction with the trunk line they were rebilled to destination over the Illinois Central at the local rate of 11 cents per 100 pounds, applicable on lumber and forest products. Subsequently, on proof that they were manufactured into lumber at Memphis and that the manufactured product moved out over the rails of the Illinois Central, refund was made to the consignees at Memphis of the difference between the local rate and the net log rate of  $7\frac{3}{4}$  cents. Out of the combination rate of  $11\frac{1}{4}$  cents, the Natalbany Railway thus received  $3\frac{1}{2}$  cents for a movement of 25.63 miles to Natalbany, and the Illinois Central  $7\frac{3}{4}$  cents for the movement from Natalbany to Memphis, a distance of 340 miles.

It is the contention of complainant, apparently, that the supplemental report in *The Tap Line Case, supra*, authorized an allowance out of the trunk line rates from the junction whether the rates were restricted to apply on local traffic only or were maintained as joint rates applicable from points on the tap line. With respect to this particular case it is argued that the movement from Grangeville Junction to Memphis was a through movement under a through rate of  $14\frac{1}{2}$  cents, composed of the local rate or arbitrary of  $3\frac{1}{2}$  cents to Natalbany and 11 cents beyond, and that the refund subsequently made by the Illinois Central to the basis of the net log rate of  $7\frac{3}{4}$  cents applied on the outbound movement of the manufactured product and not on the inbound logs. The defendant contends, on the other hand, that the purpose of the supplemental order was to restore to the tap lines the joint rates that had been previously maintained on lumber milled at the mills of the proprietary companies, and to fix the amount of the divisions that should be applicable thereto, and that it did not require the establishment either of joint rates or allowances on logs destined to milling points on the trunk lines when such rates and allowances had never been in force. It therefore denies that the complainant is entitled to a division of the 11-cent rate collected in the first instance or of the net rate. In this connection it should be stated that the tariff authorizing the application of the net rates, which are made on a distance scale, specifically provided that they would apply from junctions with connecting lines on traffic originating at points on such lines from which no through rates were in effect. The same tariff also provided that the inbound rate

52 I. C. C.

on the logs would be reduced to the net rate upon satisfactory proof that the manufactured product was shipped from the milling point by way of the Illinois Central.

The Natalbany Railway was a party to the original *Tap Line Case*, 23 I. C. C., 277, and in the supplemental report therein, 23 I. C. C., 549, 642, was held to be a tap-line common carrier. By order of May 14, 1912, as amended October 20, 1912, the Illinois Central was authorized to reestablish in connection with that carrier the through routes and joint rates in effect April 30, 1912, and to pay out of such rates an allowance on the products of the mills of the proprietary company not in excess of \$1.50 per car.

Following the decision of the Supreme Court of the United States in *The Tap Line Cases*, 234 U. S., 1, the Commission issued its second supplemental report and in connection therewith entered its order of July 29, 1914, by which it vacated all previous orders and required the principal defendants to reopen and restore all the through routes and joint rates with their connecting tap lines that were in effect prior to May 1, 1912. The maximum allowances which the trunk lines were authorized under that order to accord to the tap lines on lumber and forest products varied from \$2 per car for switching a distance of 1 mile or less from the junctions to 4 cents per 100 pounds for a movement of over 40 miles, and the divisions therein established were required to be applied to shipments which moved between May 1, 1912, and the date upon which the rates were made effective. In compliance therewith the Illinois Central reestablished the joint rates which it had formerly maintained and has paid the Natalbany Railway a division on lumber milled at points on that line. It has not established joint rates where none were previously in effect and its failure to do so is not in issue in this proceeding.

In prior proceedings relating to the relations between tap lines and trunk lines it was found that, in some instances, the former were mere plant facilities of their proprietary companies and were not entitled to joint rates and divisions on proprietary traffic; in others, that they performed a bona fide transportation service with respect to both proprietary and nonproprietary traffic. As to tap lines of the latter class the reestablishment of through routes and joint rates formerly maintained on the products of the mills of the proprietary companies was therefore ordered, with restrictions as to the amount of the allowances that might lawfully be paid by the trunk lines. Subsequently, upon petitions filed by five of the tap lines which had been barred from participation in joint rates, the Supreme Court announced its decision, hereinabove referred to, holding these five lines to be common carriers of both proprietary and

nonproprietary traffic, and that the Commission had erred in its conclusions. Thereupon the Commission issued its supplemental report vacating its previous orders, and requiring the reestablishment of "all the through routes and joint rates in effect prior to May 1, 1912, between the trunk lines and the tap lines," prescribing at the same time the maximum divisions that should be applicable thereto.

It is apparent from this review of the tap-line proceedings that the order relied upon by the complainant does not establish its right to an allowance out of the local rate on logs maintained by the Illinois Central from the junction, and the record affords no basis therefor on other grounds. The complaint should be dismissed.

*WOOLLEY, Commissioner:*

Substantially the above report was proposed by the examiner who heard the case and served upon the parties. Exceptions thereto were filed by the complainant. These have had careful consideration. We adhere to the examiner's conclusions and adopt the foregoing report as the report of the Commission. An order will be entered dismissing the complaint.

52 I. C. C.

No. 8260.

NEPHI PLASTER & MANUFACTURING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

*Submitted October 28, 1918. Decided March 17, 1919.*

Rates on plaster, in carloads, from Gypsum, Utah, to points in California on the lines of the Atchison, Topeka & Santa Fe Railway Company and Southern Pacific Company, found unjust and unreasonable. Just and reasonable rates prescribed.

*W. S. McCarthy, H. W. Prickett, and W. L. Ellerbeck* for complainant.

*T. J. Norton and E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company; *E. W. Camp and A. S. Halsted* for San Pedro, Los Angeles & Salt Lake Railroad Company; and *C. W. Durbrow and George D. Squires* for Southern Pacific Company.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

Complainant manufactures hard wall plaster and other gypsum products at Gypsum, Utah. By complaint filed August 24, 1915, it alleged that defendants' rates on plaster, in carloads, from Gypsum to San Francisco, Sacramento, and other points in California on the lines of the Atchison, Topeka & Santa Fe Railway Company, hereinafter called the Santa Fe, and Southern Pacific Company were unreasonable, unjustly discriminatory, and unduly prejudicial. The establishment of reasonable and nondiscriminatory rates is asked. On June 25, 1918, subsequent to the hearing, all of the defendants' interstate commodity rates applicable to the transportation of plaster in line-haul movement were increased 2 cents per 100 pounds pursuant to General Order No. 28, issued by the Director General of Railroads. By supplemental complaint filed on September 30, 1918, after the hearing, the Director General of Railroads was made a party defendant and the complainant consented to the increase as provided in General Order No. 28 of the rates for the future prayed for in its original complaint. No further hearing was asked or had. Rates are stated in cents per 100 pounds except as otherwise noted.

In its original complaint complainant asked that a rate of 25 cents be established on plaster, in carloads, from Gypsum to San Francisco, to be observed as a maximum at intermediate points, by way of the following routes over the four defendant lines: (a) Denver & Rio Grande Railroad to Nephi, Utah, Los Angeles & Salt Lake Railroad, hereinafter called the Salt Lake line, to Daggett, Cal., thence Santa Fe to San Francisco, a distance of 1,016 miles; (b) Denver & Rio Grande Railroad to Nephi, Salt Lake line to Colton, Cal., thence "coast line" of the Southern Pacific Company, by way of San Jose, Cal., to San Francisco, a distance of 1,173 miles; and (c) Denver & Rio Grande Railroad to Nephi, Salt Lake line to Colton, thence by way of "San Joaquin Valley line" of the Southern Pacific Company, by way of Bakersfield, Cal., to San Francisco, a distance of 1,175 miles. The same rate is sought to Sacramento by way of the Denver & Rio Grande to Nephi, Salt Lake line to Colton, and Southern Pacific beyond, a distance of 1,162 miles, and to intermediate points.

When the original complaint was filed and at the time of hearing a combination commodity rate of 36 cents applied on plaster, in carloads, from Gypsum to all points on the Santa Fe, Bakersfield to San Francisco, inclusive. This rate was based 1 cent to Nephi, about 1 mile west of Gypsum, 20 cents to Los Angeles, through Barstow, Cal., and 15 cents back through Barstow to the destinations named. The 15-cent component was canceled January 15, 1916, except as to Bakersfield, and the class rates became applicable. The rate to Mojave and Franklin, points on the Santa Fe south of Bakersfield, was 37 cents, based 1 cent to Nephi, 20 cents to Barstow, and 16 cents beyond. South of Franklin the rates graded downward. The departures from the fourth section were protected by appropriate applications. Effective January 7, 1918, the 15-cent rate from Los Angeles to Bakersfield was made applicable to points on the Santa Fe as far south as Mojave, and resulted in through combination rates of 36 cents, based in the same manner as the rate to Bakersfield. The rates to points on the Southern Pacific's "coast line" and "San Joaquin Valley" line were made by the application of the 1-cent rate to Nephi, the 20-cent rate to Los Angeles, and the class C rates beyond. The following table of rates is illustrative:

To—	From Los Angeles. Class C.	From Gypsum.	To—	From Los Angeles. Class C.	From Gypsum.
<b>San Joaquin Valley line:</b>	<i>Cents.</i>	<i>Cents.</i>	<b>Coast line:</b>	<i>Cents.</i>	<i>Cents.</i>
Saugus.....	6	27	Chatsworth.....	12	33
Mojave.....	16	37	Montalvo.....	15	36
Bakersfield.....	19	40	Ventura.....	15	36
Fresno.....	22	43	Santa Barbara.....	21	42
Modesto.....	27	48	San Miguel.....	37.5	58.5
Stockton.....	27.5	48.5	San Lucas.....	44.5	65.5
Sacramento.....	27.5	48.5	San Jose.....	27.5	49.5
San Francisco.....	27.5	48.5	Santa Clara.....	27.5	49.5

The minima under the rates assailed are 40,000 and 50,000 pounds in different cases. The evidence indicates that a 60,000-pound minimum would be satisfactory to complainant.

Contemporaneously a rate of 25 cents, minimum 50,000 pounds, applied on plaster, in carloads, from Gypsum to San Francisco by way of the Denver & Rio Grande Railroad to Salt Lake City, Utah, and the Western Pacific Railway beyond, a distance of 1,093 miles. Complainant contended that a similar rate should apply over the three routes in question. Its representative testified that, because of the higher rates from Gypsum to the points in the San Joaquin Valley, he was unable to make selling arrangements with San Francisco dealers.

The Salt Lake line tentatively offered to establish a rate of 27.5 cents from and to the points concerned, but complainant refused to accept this compromise. Lower rates than those applicable over these routes applied from Gypsum to many of the points by way of the Denver & Rio Grande Railroad to Nephi, Salt Lake line to Salt Lake City, Oregon Short Line to Ogden, Utah, and Southern Pacific Company beyond, based 1 cent to Nephi and the factors beyond, as shown below :

To—	From Nephi.	From Gypsum.	To—	From Nephi.	From Gypsum.
	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
Sacramento.....	32.5	33.5	Modesto.....	35	36
Stockton.....			Fresno.....		
San Jose.....					
Santa Clara.....					
San Francisco.....					

Complainant cited a carload rate of 15 cents on land plaster, which, it is stated, generally takes the same rates in this territory as wall plaster, from Nephi to East San Pedro, Cal., 738 miles, and urged that if the carriers could maintain such a rate they should also maintain from Nephi to Daggett, 552 miles, as a portion of a through rate to the points in question, a rate not in excess of 12 cents; and that for the movement from Daggett to San Francisco, 461 miles, the rate should not exceed 12 cents, as the rate on wall plaster, in carloads, from Amboy, Cal., directly through Daggett to San Francisco, 537 miles, was 15 cents. Two such 12-cent components, with the 1-cent rate from Gypsum to Nephi, would have made the through rate sought. Attention was directed to the fact that land plaster could be shipped 1,304 miles, from Nephi to San Francisco, over defendants' lines, with four terminal services, at a rate of 30 cents, based 15 cents Nephi to Los Angeles, 711 miles, and 15 cents thence to San Francisco by way of the Santa Fe, 593 miles, and that the rate yielded 4.6 mills per ton-mile.

Complainant showed that under a rate of 25 cents to a point halfway between Daggett and San Francisco on the Santa Fe, 785 miles from Gypsum; to a point halfway between Colton and San Francisco on the Southern Pacific's San Joaquin Valley line, 911 miles from Gypsum; and to a point halfway between Colton and San Francisco on the coast line of the Southern Pacific, 910 miles from Gypsum, the car-mile earnings, based on 60,000 pounds, would be 19.11, 16.46, and 16.48 cents, respectively, and the ton-mile earnings would be 6.36, 5.48, and 5.49 mills, respectively. The earnings at the 25-cent rate by the three routes to San Francisco would range from 12.76 cents to 14.76 cents per car-mile, and from 4.25 mills to 4.92 mills per ton-mile. The 15-cent rate from Amboy to San Francisco, 537 miles, yielded 5.58 mills per ton-mile. A rate of 25 cents from Gypsum by way of Daggett and the Santa Fe to Bakersfield, 704 miles, would yield 7.1 mills per ton-mile; to Stockton, 937 miles, 5.33 mills per ton-mile.

Complainant also cited rates on plaster, in carloads, for three or four line hauls between various points in the United States, ranging from 15 cents for 1,196 miles to 28.5 cents for 1,247 miles. Among cited rates on other low-grade commodities are carload rates of 21.25 cents on phosphate rock from Diamondville, Wyo., to Nadiou Park, Cal., 1,088 miles; 22 cents on lime from East Dubuque, Ill., to Trinidad, Colo., 1,242 miles; and 25 cents on fire brick and fire clay from Auburn, Wash., to Anaconda, Mont., 1,086 miles.

Some stress is laid upon the relation of the rates assailed to plaster rates from Mound House, Nev., on the Southern Pacific and Virginia & Truckee railways; Amboy, Cal., on the Santa Fe; Arden, Nev., on the Salt Lake line; and Los Angeles, on both the Santa Fe and Southern Pacific. Complainant urged that the last-named lines maintain rates from these competitive points on such a basis that complainant is unable to compete. Illustrative rates in effect at the time of the hearing are shown in the following table:

	Distance.	Rate.	Earnings per ton-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
<b>To San Francisco, Cal., from:</b>			
Mound House, Nev.....	284	15	10.5
Amboy, Cal.....	538	15	5.57
Arden, Nev.....	625	25	8.00
<b>To Merced, Cal., from:</b>			
Mound House, Nev.....	304	15	9.8
Amboy, Cal.....	394	15	7.61
Arden, Nev.....	482	25	10.37
<b>To Bakersfield, Cal., from:</b>			
Mound House, Nev.....	466	15	6.4
Amboy, Cal.....	226	15	13.27
Arden, Nev.....	314	25	15.92

The 15-cent rate from Los Angeles to San Francisco, 593 miles by way of the Santa Fe, earned about 5 mills per ton-mile. The distance

from Los Angeles to San Francisco over the Southern Pacific is 469 miles, but the rate was 12.5 cents higher over that route.

The witness for the Santa Fe condemned complainant's method of figuring earnings to halfway points in the San Joaquin Valley, on the ground that there would be practically no consumption of plaster at any point south of Bakersfield, except perhaps a small quantity at Mojave, and that the territory south of Mojave on its line is practically a desert. He further testified that, while 785 miles may represent the halfway distance, the average consuming point would be at least north of Fresno, 814 miles from Gypsum in connection with the Santa Fe, and 981 miles in connection with the Southern Pacific.

The Southern Pacific and Santa Fe urged that the cited rates from the competitive points are very low and were established primarily for the purpose of enabling the plaster plants at those points to market their products. For the Santa Fe it was testified that the 25-cent rate maintained from Gypsum to San Francisco in connection with the Western Pacific was established to compete with the rate from Mound House, as the Western Pacific had no plaster plant on its own line; and that the rate from Amboy to San Francisco, 537 miles, was made some years ago to meet the rate from Mound House to the same point, 343 miles, although there is a substantial difference in distance. It was also testified that the rate from Los Angeles to San Francisco was held down by the rate from Arden to San Francisco, said to have been 16.25 cents by way of San Pedro, Cal., in connection with regular boat lines, and still lower in connection with tramp steamers. A rate of \$2 per net ton also applied from Arden, Nev., on the Salt Lake line, to Los Angeles, 323 miles; and as the distance from Nephi to Los Angeles is 711 miles, defendants explain that they could well afford to maintain from and to the last-named points a differential over Arden of \$2 per ton, resulting in the rate of \$4 per ton, equivalent to 20 cents per 100 pounds, from Nephi to Los Angeles. Witnesses for the defendants testified that practically all of the rates cited in comparison by complainant were made under the stress of the keenest rail competition and in many instances applied from the points named to territories in which the commodities are produced.

Defendants cited the following rates:

To—	From Los Angeles.		From Nephi.		From Mound House.	
	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Bakersfield, Cal.....	169	19	702	35	466	15
Visalia, Cal.....	250	22	1,024	35	400	15
Fresno, Cal.....	276	22	983	35	359	15
Merced, Cal.....	331	25	928	35	304	15
Stockton, Cal.....	398	27.5	861	32.5	237	13.5
San Francisco, Cal.....	469	27.5	907	32.5	284	15



The rates from Los Angeles to the points named applied by way of the Southern Pacific; the rate by way of the Santa Fe to the same points was, as previously stated, 15 cents. Particular attention is directed to the fact that the ton-mile earnings under the rates from Nephi in connection with the Southern Pacific, plus the 1-cent rate from Gypsum, average about 8.7 mills, and under the rates from Mound House about 9 mills.

Defendants' testimony was very elaborate with respect to the difficulties of transportation over the routes in question, especially with respect to those that attend the maintenance of the Salt Lake line through what is called the Meadow Valley wash, where cloud-bursts are said to be frequent. Also, it was shown that great difficulties are encountered by the Santa Fe and Southern Pacific in transporting shipments over the Tehachapi mountains to the points in question. The Tehachapi grade extends from Mojave to Bakersfield, 67.8 miles, 30.5 miles of which consist of curves including 2.6 miles of curves greater than 10 degrees. The line between those points is jointly used by the Santa Fe and Southern Pacific. Traffic to San Francisco from Amboy, and from Los Angeles by way of the Santa Fe and the Southern Pacific San Joaquin Valley line also is hauled over the Tehachapi mountains, and in the haul from Mound House to the points in question the Sierra Nevada range of mountains is crossed.

Upon full consideration of all the facts of record we are of opinion and find that the rates assailed should not have exceeded 27.5 cents per 100 pounds prior to June 25, 1918, on which date the present rates were initiated by the Director General; and that the present rates are and for the future will be unjust and unreasonable to the extent that they exceed or may exceed 29.5 cents per 100 pounds, minimum not exceeding 60,000 pounds. Traffic to points on the Southern Pacific may be interchanged either at Colton or Los Angeles, as the carriers may agree.

An appropriate order will be entered.

52 I. C. C.

No. 8827.

PUBLIC UTILITIES COMMISSION OF THE STATE OF  
COLORADO ET AL.*v.*ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted December 21, 1918. Decided March 31, 1919.*

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Upon original and supplemental complaints attacking substantially all class and many commodity rates between Colorado common points and points south and east thereof and from Denver and other points in Colorado taking the same rates to destinations in western states, in effect April 21, 1916, when the original complaint was filed, and as increased June 25, 1918, under General Order No. 28, issued by the Director General of Railroads; Held:

1. That the record is not convincing that the class rates in effect April 21, 1916, between Chicago, the Mississippi River and the Missouri River, on the one hand, and Colorado common points, on the other, were or that those initiated by the Director General and made effective June 25, 1918, are, unjust, unreasonable, or unduly prejudicial.
2. That although certain of the commodity rates from Chicago and the rivers to Colorado common points appear to have been and to be relatively high by comparison with rates on like articles from the same originating territories to Utah common points, no adequate basis for a readjustment has been laid in this record.
3. That the class rates made effective June 25, 1918, which carry the increase of 25 per cent ordered by the Director General, between Denver and Pueblo and certain points in interior Kansas and Nebraska; between Denver and points grouped therewith and Galveston, Tex., and intermediate points in Texas via the route designated; from Denver and other points in Colorado taking the same rates to certain stations on the Atchison, Topeka & Santa Fe Railway, Santa Fe, Prescott & Phoenix Railway, and Rio Grande, El Paso & Santa Fe Railroad in New Mexico, Arizona, and Texas; and from Denver and Denver rate points in Colorado to certain stations on the Chicago, Burlington & Quincy Railroad in Nebraska, South Dakota, and Wyoming; are, and for the future will be, unjust, unreasonable, and unduly prejudicial to the extent that they exceed the maxima herein prescribed.
4. That, with the exceptions indicated above, the record does not show the class rates to stations north, south, and west of Denver on the lines of defendants herein to have been or to be unjust, unreasonable, or unduly prejudicial.
5. That there is no basis for a finding that the ocean-rail and rail-ocean-rail class and commodity rates from Atlantic seaboard territory to Colorado common points via the port of Galveston, Tex., in effect when the

complaint was filed, or as subsequently increased, were, or are, unjust, unreasonable, or unduly prejudicial, except to the extent that they exceed the combination rates contemporaneously maintained through the port of Galveston.

6. That no necessity has been shown for the establishment of outbound commodity rates from Denver to western destinations.

*M. H. Aylesworth* for Public Utilities Commission of the State of Colorado; and *Albert L. Vogl, Carle Whitehead, and George A. Carlson* for Colorado Fair Rates Association.

*H. A. Scandrett, E. E. Whitted, A. S. Brooks, F. H. Wood, Thompson & Barwise, Kenneth F. Burgess, E. N. Clark, J. G. McMurry, Wallace T. Hughes, T. J. Norton, Fred G. Wright, Henry T. Rogers, George A. H. Fraser, Robert H. Widdicombe, R. B. Scott, W. F. Dickinson, and H. G. Herbel* for defendant carriers.

*R. Walton Moore* for Director General of Railroads.

*Hugh H. Williams, B. F. Seggerson, M. S. Groves, and Bonafacio Montoya* for State Corporation Commission of New Mexico; *F. W. Maxwell* and *W. A. Hover* for Denver Transportation Bureau of the Denver Civic and Commercial Association; *W. J. H. Doran* for Denver Manufacturers' Association; *Cass E. Herrington* and *R. L. Hearon* for Colorado Fuel & Iron Company; *Geo. J. Kindel* for State Grange of Colorado, National Mattress Makers' Association, and Green Valley Grange No. 158 of Denver; *W. S. McCarthy* and *H. W. Prickett* for Traffic Bureau of Utah; *H. W. Bishop* for Wyoming Grocery Company; *Glenn G. Moffitt* for Hutchinson Traffic Bureau; *Walter S. Whitten* for Lincoln Commercial Club; *W. J. C. Kenyon* for Commerce Club of St. Joseph, Mo.; *E. J. McVann* for Commercial Club of Omaha, Nebr.; *C. E. Childe* for Sioux City Commercial Club; *R. D. Sangster* for Chamber of Commerce of Kansas City, Mo.; and *H. H. Williams* for Chas. Ilfed Company and Gross-Kelly Company.

#### REPORT OF THE COMMISSION.

##### *HALL, Commissioner:*

By complaint filed April 21, 1916, the Public Utilities Commission of Colorado and the Colorado Fair Rates Association, a corporation, seek in this proceeding a comprehensive readjustment of practically the entire schedule of rates between Colorado common points, particularly Denver, Colorado Springs, Pueblo, and Trinidad, and points south and east thereof, and from Denver and other points in Colorado taking the same rates to destinations in western states. They attacked as unjust, unreasonable, and unduly prejudicial, in violation of sections 1, 2, and 3 of the act to regulate commerce (a) class rates between Colorado common points and the Missouri River, the Mississippi River, hereinafter called the rivers, and Chicago;

(*b*) commodity rates from the rivers and Chicago to Colorado common points; (*c*) class rates between Denver or Pueblo and points in Kansas and Nebraska; (*d*) class rates between Denver, and points grouped therewith, and Galveston, Tex., and points intermediate in Texas and New Mexico via the route designated; (*e*) ocean-rail and rail-ocean-rail class and commodity rates from Atlantic seaboard territory via the port of Galveston to Colorado common points; (*f*) class rates from Denver and other points in Colorado taking the same rates to certain destinations in the states of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming; and (*g*) commodity rate from Denver and points taking the same rates to certain destinations in the same states except California, Nevada, South Dakota, and Washington. They asked the establishment of just, reasonable, and nonprejudicial rates, but did not ask for reparation.

Many of the rates attacked had been prescribed or approved by us in former cases but complainants alleged that full relief had not yet been realized, principally by reason of the insufficiency of the pleadings in such cases. In this proceeding it has been their aim to present a complaint broad enough to warrant a decision such as the situation is said to require.

#### INTERVENTION.

A general readjustment of the rates to and from Colorado would affect the commercial interests not only of Denver and other Colorado common points, but also of jobbing and other points in neighboring states. Many petitions of intervention were filed, some in behalf of and others in opposition to the complaint. Organizations representing the commercial interests of cities located on or near the Missouri River intervened but took no active part in the proceedings. The State Corporation Commission of New Mexico appeared in the interest of the jobbers of that state. The traffic bureaus of Utah and of Hutchinson, Kans., and the Wyoming Grocery Company, of Casper, Wyo., intervened to present their claims for consideration in the event of a readjustment of the Colorado rates. The Colorado State Grange intervened in behalf of complainants.

The Manufacturers' Bureau of the Denver Civic and Commercial Association, composed of jobbers, manufacturers, and retailers in Denver who handle in the aggregate between 75 and 80 per cent of the tonnage to and from Denver, and the Colorado Fuel & Iron Company, the largest manufacturing enterprise in the state of Colorado, actively opposed the complaint. Their position is, in brief, that if the resources of the state are to be developed and manufacturing

encouraged the freight rates should be so adjusted as to afford protection to the industries now established in Colorado against destructive competition from other distributing and manufacturing centers. They contend that the reductions sought in the inbound rates would afford their eastern competitors readier access to the Colorado markets, and result in detriment to the business interests of Colorado unless compensating advantages were secured by reductions in outbound rates to points within the state. Another objection urged is that under the proposed readjustment of inbound rates the spread between the carload and less-than-carload rates would be reduced, thus restricting in some measure the territory in which jobbers and manufacturers of Colorado are now able to meet eastern competition. No opposition is urged against the proposed reductions in the outbound rates.

#### FEDERAL CONTROL.

Before considering the rates at issue reference should be made to the changes that have taken place in the operation of the roads and in their rates for transportation since this proceeding was heard.

On December 28, 1917, control of the transportation systems of the country was taken over by the President and a Director General of Railroads was appointed. On March 21, 1918, the act commonly known as the federal control act was approved by the President. This provided in section 10 for the initiation of rates by the President during the period of federal control whenever in his opinion the public interest required. In the exercise of this power the Director General found and certified to us in his General Order No. 28 that in order to defray the expenses of federal control and operation fairly chargeable to railway operating expenses, and also to pay railway tax accruals other than war taxes, net rents for joint facilities and equipment, and compensation to the carriers operating as a unit, it was necessary to increase the railway operating revenues, and by said General Order No. 28 issued on May 25, 1918, as supplemented June 12, 1918, effective June 25, 1918, increased by 25 per cent the rates then in effect on classes and most commodities of carriers under federal control. The rates of the carriers here defendant were increased accordingly on that date. Subsequently five of the defendant carriers whose rates had thus been increased, to wit: the Bingham & Garfield, Tonopah & Goldfield, Bullfrog Goldfield, Las Vegas & Tonopah, and Nevada Northern were notified by the Director General of their release from federal control.

On the day that General Order No. 28 was issued the Director General also issued his General Order No. 27, providing for sub-

52 I. C. C.

stantial increases in the wages of railroad employees. These wage increases, together with others subsequently made by him, and increases in the costs of materials and supplies, are items directly affecting the operating expenses of the carriers and must be borne by the public through the medium of the rates paid for transportation. They have, in large measure at least, absorbed the additional revenue derived under General Order No. 28.

On application of the complainants, made in view of the change in conditions effected by federal control and operation, the Director General has been made a party defendant and a supplemental complaint against him and the other defendants was filed on November 4, 1918. The supplemental complaint and the answer thereto of the Director General put in issue the reasonableness and propriety of the rates made effective on June 25, 1918. The parties have advised us that they do not desire to present additional evidence and the case thus stands submitted upon the record previously made. In the absence of any evidence in this record, other than the certificate above referred to, as to the justness and reasonableness of the 25 per cent increase our conclusions necessarily turn on the basis to which that uniform percentage is applied. In so far as that basis was unjust or unreasonable, absolutely or relatively, to that extent the increased rate perpetuates or magnifies the vice which the law condemns, and must itself be found unjust and unreasonable for present or future application. In this connection it may be noted that if the conclusions to which we have come as to the rates under attack in the original complaint had been given effect prior to General Order No. 28, the 25 per cent increase thereby initiated would have applied to the readjusted rates as in that order provided. As it is, the increased rates are attacked by the supplemental complaint, our duty to determine their justness and reasonableness is expressly declared in section 10 of the federal control act, and the conclusions to which we have come upon this record will have the same result for the future as would have followed the putting into effect of those conclusions before the increase was made.

We proceed to consider the rates under attack in the original complaint. For brevity they will be termed the "rates" as distinguished from the increased rates initiated by the Director General put in issue by the supplemental complaint, which will be termed the "present rates," and except where otherwise specified or clearly apparent from the context are to be understood as being the rates in effect on June 24, 1918. Rates proposed by complainants in lieu of those assailed in the original complaint will be termed "proposed rates." All will be stated in amounts per 100 pounds.

52 I. C. C.

**A. CLASS RATES BETWEEN COLORADO COMMON POINTS AND THE RIVERS  
AND CHICAGO.**

Class rates between Colorado common points, on the one hand, and the rivers and Chicago, on the other, were established some years ago in compliance with our orders in *Kindel v. N. Y., N. H. & H. R. R. Co.*, 15 I. C. C., 555, and *Colorado Mfrs. Asso. v. A., T. & S. F. Ry. Co.*, 28 I. C. C., 82. Complainants allege that these rates were unreasonable and unduly prejudicial and should not have exceeded rates based on a mileage prorate of the New York-Chicago scale, reckoning each mile west of the Missouri River as the equivalent of 2 miles in that scale. They seek to have the so-called percentage system of rate construction obtaining in central freight association territory, as described in *Saginaw Board of Trade v. Grand Trunk Ry. Co.*, 17 I. C. C., 128, *Chamber of Commerce of Freeport, Ill. v. Ry. Co.*, 33 I. C. C., 673, and *Michigan Percentage Cases*, 47 I. C. C., 409, extended westward to Denver to the extent that dissimilar transportation conditions east and west of Chicago will permit.

The short-line distance from Chicago to Denver is 1,018 miles, 480 miles to the Missouri River, and 538 miles from the Missouri River to Denver, resulting in a constructive mileage, under the plan advocated by complainants, of 1,556 miles. The constructive mileage thus obtained is 171 per cent of the short-line distance from New York to Chicago and the proposed rates on the first four classes from Chicago to Denver are 171 per cent of the rates on the same classes from New York to Chicago. Owing to the difference between the number of classes in the official classification, which applies east of Chicago, and in the western classification, which applies west, it was necessary for complainants to adopt a different method in order to complete the class-rate series. The proposed rate from Chicago on the classes lower than fourth class are determined by the relationship of those classes to fourth class in the Chicago-Colorado scale, and those from the Mississippi River and the Missouri River, respectively, by the relationship of the first-class rates therefrom to the first-class rate from Chicago.

The class rates and those proposed by complainants are:  
Between Chicago and Colorado common points:

Classes .....	1	2	3	4	5	A	B	C	D	E
Rates .....	180	145	110	85	67	80.5	63	54	47	40
Proposed rates .....	135	117	90	63	50	60	47	40	35	30

Between the Mississippi River and Colorado common points:

Classes .....	1	2	3	4	5	A	B	C	D	E
Rates .....	162	127	101	80.5	63	74	56	50	42	36
Proposed rates .....	122	105	81	57	45	54	42	36	32	27

52 I. C. C.

## Between the Missouri River and Colorado common points:

Classes .....	1	2	3	4	5	A	B	C	D	E
Rates .....	115	92	74	60	47	56	42	37	33	29
Proposed rates .....	87	75	58	40	32	39	30	26	23	19

On July 16, 1917, after the hearing in this proceeding, the class scale between New York and Chicago was increased from 78.8 cents, first, class, to 90 cents, first class, as authorized in *The Fifteen Per Cent Case*, 45 I. C. C., 303. Under the percentage basis advocated by complainants this increase would be reflected west of Chicago, and the proposed first-class rate from Chicago to Denver would be \$1.54 instead of \$1.35.

The evidence offered by the complainants in support of their proposal and by the defendants in opposition thereto is voluminous but requires no extended discussion. Briefly, complainants show that the average density of traffic, in other words, the revenue tons carried per mile of road operated, in official classification territory, excluding New England, for the five fiscal years from 1890 to 1894, inclusive, was 142 per cent of the average density during the corresponding five-year period from 1906 to 1910 in what was then designated for statistical purposes as territorial group 7, comprising Wyoming, Montana, Nebraska, and portions of Colorado, Kansas, South Dakota, and North Dakota. Their explanation for comparing such widely separated periods is not altogether clear but is, apparently, that the density west of Chicago has increased until it approximates that in eastern territory when a first-class rate of 75 cents was established between New York and Chicago. The territorial groupings referred to appeared for the first time in our statistical report for 1890, and thus some years after the 75-cent rate had been established, but were discontinued after 1910. The purpose of this comparison was to demonstrate that in proposing rates between Chicago and Colorado common points based on 171 per cent of the New York-Chicago rates full allowance had been made for differences in traffic density. Defendants show that for the fiscal year ended June 30, 1916, the average density of traffic on representative trunk lines<sup>1</sup> operating between New York and Chicago was 463 per cent of the average density on representative lines<sup>2</sup> operating west of Chicago. Other comparisons relate to the density of population per square mile east and west of the Mississippi River.

The propriety of extending the New York-Chicago scale beyond its present limits was considered in *The Wisconsin Rate Cases*, 44 I. C.

<sup>1</sup> Pennsylvania Railroad; Pennsylvania Company; New York Central Railroad; Baltimore & Ohio Railroad; and Erie Railroad.

<sup>2</sup> Chicago & North Western Railway; Chicago, Milwaukee & St. Paul Railway; Chicago, Rock Island & Pacific Railway; Chicago, Burlington & Quincy Railroad; and Atchafalaya, Topeka & Santa Fe Railway.

52 I. C. C.



C., 602, where we found that the circumstances and conditions governing the adjustment of rates from trunk line territory to points west of Chicago in prorating territory did not apply to transportation to the neighboring state of Wisconsin, and we declined to extend it. If not extended to Wisconsin, where its influence is most strongly encountered, it would require a more comprehensive showing than has been here made to convince us that it should be extended to points as far removed as Colorado common points. We are clearly of opinion that the evidence does not warrant adoption of the New York-Chicago scale as the basis for construction of rates between Chicago and Colorado.

The Colorado State Grange and the Traffic Bureau of Utah, interveners herein, urge that the express rates should be adopted as the standard for freight rates to and from Colorado. We have already reached the conclusion, as stated in *In Re Express Rates, Practices, Accounts, and Revenues*, 24 I. C. C., 380, that under the methods employed in determining rates there can be no fixed relationship between freight and express rates except, perhaps, on some of the short lines. In our judgment nothing before us would warrant the adoption of express rates as a standard.

Defendants rely largely upon comparisons with the rates to Utah prescribed in *Class and Commodity Rates to Salt Lake City*, 32 I. C. C., 551. In June, 1910, a little more than a year after the class rates to Colorado had been before us in the *Kindel Case*, *supra*, we prescribed class rates to points in Utah. *Commercial Club, Salt Lake City, v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218. The first-class rates there found reasonable were \$2.45 from Chicago, \$2.27 from the Mississippi River, and \$1.90 from the Missouri River. The class rates to Utah points later authorized in *Class and Commodity Rates to Salt Lake City*, *supra*, were on a scale of \$2.65, first-class, from Chicago, \$2.47 from the Mississippi River, and \$2 from the Missouri River.

The average short-line distance, as stated by defendants, from four principal Missouri River crossings, Sioux City, Iowa, Omaha, Nebr., and St. Joseph and Kansas City, Mo., to four Colorado common points, viz, Cheyenne, Wyo., Denver, Pueblo, and Trinidad, Colo., is 639.3 miles, which is 55.88 per cent of the average distance, 1,144 miles, from the same Missouri River crossings to Salt Lake City. The distance between the rivers is approximately 300 miles, and between the Missouri River and Chicago 500 miles. The average distance to the Colorado common points from the Mississippi River is therefore 65.03 per cent, and from Chicago 69.3 per cent of the distance to Salt Lake City. The averages of the class rates from the Missouri River, the Mississippi River, and Chicago to Colorado

common points are shown to have been but 54 per cent, 61 per cent, and 63 per cent, respectively, of the averages of the rates to Utah.

From a mileage standpoint it appears that the class rates to Colorado common points compared favorably with those to Utah, and this is also true of comparisons between the ton-mile earnings on class traffic. The average revenue per ton-mile from Chicago to Salt Lake City under the class scale was 16.75 mills, to Colorado 15.30 mills; from Mississippi River points to Salt Lake City 17.87 mills, to Colorado 16.86 mills; and from Missouri River points to Salt Lake City 19.11 mills, compared with 18.31 mills to Colorado common points.

The following is a comparison between the Missouri River-Colorado rates and rates based on the Missouri River-Nebraska distance scale prescribed in *The Missouri River-Nebraska Cases*, 40 I. C. C., 201, for a distance of 639 miles:

Classes-----	1	2	3	4	5	A	B	C	D	E
Missouri River-										
Colorado rates..	115	92	74	60	47	56	42	7	33	29
Missouri River-										
Nebraska scale..	128	108.8	89.6	76.8	57.6	64	44.8	38.4	32	21.8

If the Missouri River-Nebraska scale had extended to Colorado common points the average of the Colorado rates would have been materially higher.

In *Corporation Commission of New Mexico v. Ry. Co.*, 34 I. C. C., 292, 305, we had under review class and commodity rates from Kansas City, St. Louis, and Chicago to destinations in New Mexico, including Raton, a station on the Atchison, Topeka & Santa Fe Railway 23 miles south of Trinidad and 646 miles from Kansas City. The class rates to Raton which we there considered and did not find unreasonable included rates from Kansas City beginning with \$1.35, first class. This exceeded the first-class rate to Trinidad and other Colorado common points by 20 cents, with proportionate differences in the other classes.

The spread between the classes also favors Colorado. The fifth-class rate from Chicago to Colorado common points, for example, was, until increased under General Order No. 28, 37 per cent of the first-class rate. In recent cases we have prescribed fifth-class rates, also under the western classification, which are from 45 to 50 per cent of first class. If the class rates had been adjusted in accordance with the percentage relationships prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, and 48 I. C. C., 312; *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 224; and *Corporation Commission of New Mexico v. Ry. Co.*, *supra*, many of these rates would have been materially higher.

The record before us does not afford a basis for readjustment of the percentage relationships of these class rates, if such be needed, or convince us that the class rates between Chicago and the rivers, on the one hand, and Colorado common points, on the other, were unjust, unreasonable or unduly prejudicial, as alleged in the complaint. It follows, in accord with what we have earlier said, that upon this record we do not find that the present rates, which carry the increase in those rates of 25 per cent initiated by the Director General, are unjust, unreasonable, or unduly prejudicial, as alleged in the supplemental complaint.

**B. COMMODITY RATES FROM THE RIVERS AND CHICAGO TO COLORADO COMMON POINTS.**

Complainants alleged that 118 carload and 8 less-than-carload commodity rates in force in April, 1916, from the rivers and Chicago to Colorado common points, most of which were prescribed in *Colorado Mfrs. Asso. v. A., T. & S. F. Ry. Co., supra*, were unreasonable and unduly prejudicial. They proposed commodity rates which would bear to their proposed fourth-class rates the percentage relationship of those then in effect, and apparently assume that if an article of commerce has been accorded a commodity rate which is a certain percentage of the fourth-class rate it is entitled to take the same percentage of a reduced fourth-class rate. This assumption disregards the reason for the existence of commodity rates, established, as they are, to meet special conditions and because of special considerations which are not met by or reflected in classifications or subclassifications. Those conditions may change. The considerations may gain or wane in compelling force. But so long as they are potent they find expression in exceptions to that uniformity and symmetry of rates which should characterize a classified system. *Decker & Sons v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 547, 551.

These conditions and considerations vary as to the same article of commerce. Commodity rates from Chicago to Colorado common points bear a higher percentage to the corresponding class rates than those to San Francisco. The averages of the commodity rates specified in the complaint to Colorado common points are shown to be, from Chicago about 74 per cent, from the Mississippi River about 72 per cent, and from the Missouri River about 62 per cent, respectively, of the corresponding averages to Utah common points, as against average distances which are 69 per cent, 65 per cent, and 56 per cent, respectively, of the average distances to Salt Lake City.

From St. Louis the commodity rates to Colorado common points yield lower average ton-mile earnings for a distance less by 300 miles

52 I. C. C.

than do the commodity rates to Albuquerque, N. Mex., prescribed by us in *Corporation Commission of New Mexico v. Ry. Co., supra*; average 94.3 per cent of those to Texas common points for an average distance 114.7 per cent of the Texas distance; and are relatively lower than those to interior points in Kansas prescribed in *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673.

By comparison with rates to Utah common points some of the commodity rates assailed seem as low as they should be and others relatively high. Examples of both kinds are given in the margin.<sup>1</sup> Between these extremes they vary widely. No adequate basis for a readjustment has been laid and we are unable on this record to effect it.

#### C. CLASS RATES BETWEEN DENVER OR PUEBLO AND POINTS IN KANSAS AND NEBRASKA.

Class rates between Denver or Pueblo and points in Kansas and Nebraska intermediate to the Missouri River are higher mile for mile than those on westbound traffic from Omaha, St. Joseph, Kansas City, and other Missouri River cities. Complainants attack this relation of rates as unjust, unreasonable, and unduly prejudicial and ask for rates that shall not exceed the rates contemporaneously maintained by defendants for similar distances from the Missouri River to points west thereof. The rates requested are specified as far as the midway points, and corresponding reductions are prayed for up to the points at which the rates to or from the Missouri River are encountered as maxima. In the proposed readjustment preservation of the present relationship in the rates as between Denver and Pueblo is sought.

Exhibits of record show that the class rates between Colorado and points in western Kansas and Nebraska were not made upon any definitely established basis. The scales varied on the different lines and on different branches of the same line. At Wakeenay, Kans., the midway point on the Kansas division of the Union Pacific Rail-

<sup>1</sup> Relatively low commodity rates from the Mississippi River to Colorado common points:

Bags, burlap, to Denver, \$0.51; to Salt Lake City, \$0.85.

Bags, cotton, to Denver, \$0.61; to Salt Lake City, \$1.20.

Blackboards, to Denver, \$0.63; to Salt Lake City, \$1.15.

Glass chimneys, to Denver, \$0.95; to Salt Lake City, \$1.50.

Crackers, to Denver, \$0.80½; to Salt Lake City, \$1.43.

Relatively high commodity rates from the Mississippi River to Colorado common points:

Carpets, to Denver, \$1.25; to Salt Lake City, \$1.25.

Drugs, to Denver, \$1.08; to Salt Lake City, \$1.10.

Cotton piece goods, to Denver, \$1, minimum 30,000 pounds; to Salt Lake City, \$1, minimum 30,000 pounds.

Wooden handles, to Denver, \$0.74, minimum 30,000 pounds; to Salt Lake City, \$0.68, minimum 40,000 pounds.

Rubber boots, to Denver, \$1.15, minimum 24,000 pounds; to Salt Lake City, \$1.16, minimum 30,000 pounds.

road, the first-class rate from Denver was lower than the rate from Denver to Gannett, Nebr., the midway point on its Denver-Omaha line, although the distance to the former is greater than to the latter. The rates on the first four classes, i. e., 80, 70, 63, and 55 cents, between Denver and Wakeenay were the same as those between Kansas City and Wakeenay. This equalization was made in May, 1915, to enable jobbers in Denver to compete with those in Kansas City. It is considered by the Union Pacific to be a proper relative adjustment and one to which Denver is entitled from a commercial standpoint. In March, 1916, the Chicago, Rock Island & Pacific Railway, hereinafter referred to as the Rock Island, reduced its class rates between Denver and stations in Kansas to place them on a parity with across-country stations on the Union Pacific. The rates on the Rock Island and those on the Kansas division of the Union Pacific are blanketed back from the midway points practically to the Colorado-Kansas state line.

The rates between Pueblo and points in Kansas on the Missouri Pacific and the Atchison, Topeka & Santa Fe Railway, referred to hereinafter as the Santa Fe, were relatively higher than those between Denver and Kansas points served by the Rock Island and Union Pacific. Upon the basis in effect on the Missouri Pacific and Santa Fe the rates from Denver and Pueblo were to some extent equalized, thus disregarding the additional haul of 117 miles from Denver to Pueblo. This equalization took place on the Missouri Pacific at Scott City, Kans., 213 miles east of Pueblo, and on the Santa Fe at Holcomb, Kans., 210 miles east of Pueblo. The rates from Denver and Pueblo were the same to all points in Kansas on the Rock Island. This is explained by the fact that the Rock Island forks at Limon, Colo., one branch running to Denver, 90 miles, over the rails of the Union Pacific, and the other from Limon to Colorado Springs and thence over the rails of the Denver & Rio Grande to Pueblo, 123 miles, the difference in distance from Denver and Pueblo on hauls to points in Kansas and Nebraska being 33 miles.

Class rates between Omaha, St. Joseph, and Kansas City and points in Nebraska were based on the distance scale prescribed in *The Missouri River-Nebraska Cases*, *supra*, which applied for distances up to 700 miles, and included the entire state of Nebraska. Rates into Kansas were not affected by the readjustment required in Nebraska, and were in some instances higher and in others lower than the rates for equal distances under the Missouri River-Nebraska scale.

Defendants urge that differences in conditions justify the maintenance of rates in eastern Colorado and western Kansas and Nebraska higher than in the eastern portions of the latter states. The

differences referred to are in population and density of traffic, the character of the country being much the same. Defendants show that in the counties traversed between the Missouri River and Colorado common points the average population per mile of road is 172.77 west of the midway points and 283.99 east, or 164.3 per cent of that in the western counties. An accurate comparison of the traffic density east and west of the midway points can not be obtained from the data presented at the hearing, but figures are available showing the density in Kansas, Nebraska, and Colorado for the fiscal year ended June 30, 1916, on the lines of important carriers extending from the Missouri River to the Colorado common points. This comparison follows:

	Kansas.	Nebraska.	Colorado.
<b>Miles of railroad operated:</b>			
C., B. & Q.....	260.14	2,872.71	429.33
A., T. & S. F.....	2,818.14		509.19
C., R. I. & P.....	1,167.11	250.42	374.90
Mo. Pac.....	2,384.67	390.03	152.12
<b>Total.....</b>	<b>6,630.06</b>	<b>3,503.16</b>	<b>1,465.54</b>
<b>Revenue tons 1 mile:</b>			
C., B. & Q.....	22,898,700	1,850,885,468	352,047,703
A., T. & S. F.....	2,286,112,337		351,596,507
C., R. I. & P.....	1,163,078,942	103,922,646	102,848,278
Mo. Pac.....	1,544,061,758	208,617,570	177,640,097
<b>Total.....</b>	<b>5,016,151,737</b>	<b>2,163,425,684</b>	<b>984,132,586</b>
<b>Density.....</b>	<b>756,577</b>	<b>617,584</b>	<b>671,515</b>

The above, although not confined to the territory east and west of a line midway between Colorado common points and the Missouri River, is of value as showing that the traffic density in eastern Colorado is not as light as was asserted at the hearing. Complainants admit that the movement of class traffic from Colorado into Kansas and Nebraska is not fairly comparable with that westbound from the Missouri River. It was testified that the total movement from Colorado common points to points on the Santa Fe in western Kansas for the six alternate months from July, 1915, to May, 1916, amounted to but 547,000 pounds, an average of 2,900 pounds per day. No figures were submitted showing the movement from Kansas City during the same period but, as indicating that the trend of the traffic is westbound, defendants showed that the tonnage over the Santa Fe from Dodge City, Hutchinson, and Wichita, Kans., important jobbing points in central and western Kansas, into Colorado was 1,806,000 pounds during the same period.

Class rates from Dodge City, Hutchinson, and Wichita to points in Colorado east of and including Lamar were materially lower than those for equal distances from Denver or Pueblo into western Kan-

sas. For example, from Hutchinson to Lamar, a distance of 270 miles, the rates on the first four classes when this complaint was heard were, respectively, 70, 64, 55, and 45 cents. The rates on the same classes from Pueblo to Dodge City, 267 miles, were 110, 87, 70, and 56 cents. From Wichita to Lamar, 330 miles, the rates on the first four classes were, 79, 70, 60, and 53 cents, respectively, while rates of 102, 85, 70, and 56 cents applied from Denver to Holcomb, Kans., a distance of 328 miles. Rates from Hutchinson and Wichita to Lamar are so-called "jobbers rates" and are on a basis not accorded to shippers in Pueblo or Denver.

Neither the Missouri Pacific nor the Santa Fe undertook to justify the level of the rates between Colorado and points on their lines in western Kansas. They, together with the Burlington, Rock Island, and Union Pacific, suggested that if the rates from Colorado into Kansas and Nebraska should be readjusted, as urged by complainants, the proper basis would be 125 per cent of the distance scale prescribed in *The Missouri River-Nebraska Cases*, *supra*. This would materially reduce the class rates to points on the Missouri Pacific and Santa Fe, and increase nearly all of the rates to points on the Burlington, Rock Island, and Union Pacific. The Burlington and Union Pacific did not advocate an increase in their rates.

Circumstances surrounding the transportation of traffic between Colorado points and stations in western Kansas and Nebraska, particularly in respect of sparsity of population and relatively light movement on class rates, are sufficiently dissimilar from those obtaining in eastern Kansas and Nebraska to justify some difference in the rates. But Denver and Pueblo are entitled to rates that are reasonable in themselves and reasonably related to the rates applicable westward from the Missouri River. Under the adjustment complained of the difficulties encountered by Denver and Pueblo, particularly the latter, in endeavoring to compete in the territory east of them are obvious.

In discussing Denver's disabilities in this respect we said in *The Missouri River-Nebraska Cases*, *supra*, at page 239:

In connection with the Denver adjustment it is urged by defendants that as to commodities received from the east a back haul is involved in reaching Nebraska stations, but in *Sioux City Commercial Club v. C. & N. W. Ry. Co.*, 22 I. C. C., 110, this point was held to be immaterial. Denver enjoys a trade of substantial importance in the western part of the state now carried on under difficulties which have been increased by the reduction of the Nebraska intra-state rates.

We are of opinion and find that the present class rates between Denver and Pueblo, and points in Kansas and Nebraska intermediate to the Missouri River on the main lines of defendants Chicago, Burlington & Quincy Railroad, Chicago, Rock Island & Pacific Railway,

Union Pacific Railroad, Missouri Pacific Railroad, and Atchison, Topeka & Santa Fe Railway, and points on the branch lines of the Burlington from Culbertson to Imperial, Nebr., and of the Union Pacific from O'Fallons to Haig, Nebr., respectively, are, and for the future will be, unjust, unreasonable, and unduly prejudicial to the extent that they exceed by more than 15 per cent those contemporaneously applied for like distances to interstate movements from Missouri River cities to points in Nebraska, subject to the Missouri River-Colorado common-point rates as maxima.

**D. CLASS RATES BETWEEN DENVER, AND POINTS GROUPED THEREWITH, AND GALVESTON, TEX., AND POINTS INTERMEDIATE IN TEXAS AND NEW MEXICO VIA THE ROUTE DESIGNATED.**

The class rates maintained by defendants when this complaint was filed between Denver, and points grouped therewith, and Galveston and points in Texas and New Mexico intermediate to Galveston over the route designated by the complainants were alleged to have been unreasonable and unduly prejudicial to the extent that they exceeded those proposed in the complaint, which are named specifically to and from Galveston, and as to points intermediate to Galveston are specified as far as the midway point with prayer that corresponding reductions be made south thereof until the proposed rates to and from Galveston are encountered as maxima.

The distance from Galveston to Denver over the route so designated by complainants, namely, the Galveston, Harrisburg & San Antonio, Trinity & Brazos Valley, and Houston & Texas Central to Fort Worth, Tex., and the Fort Worth & Denver City and Colorado & Southern from Fort Worth to Denver, is 1,118 miles, approximately the short-line distance. The scale of class rates which complainants propose for application between Denver and Galveston is constructed, like their proposed Chicago-Colorado scale, upon the former New York-Chicago scale. Over this route the distance from Galveston to Fort Worth is 316 miles and from Fort Worth to Denver 802 miles. Between Galveston and Fort Worth the proposed rates are based, mile for mile, on the former New York-Chicago scale. From Fort Worth to Denver each mile is reckoned as the equivalent of one and one-half miles in that scale, resulting in a constructive distance to Denver of 1,203 miles from Fort Worth and a total of 1,519 miles from Galveston, which is 167 per cent of the short-line distance from New York to Chicago. On this basis the specific rates named have been worked out in the same manner as those in the proposed Chicago-Colorado scale, basing the relationships between classes lower than fourth class on their respective percentage relations to fourth class in the Chicago-Colorado scale then in effect. The class



rates northbound and southbound and the rates proposed by complainants were:

BETWEEN GALVESTON AND DENVER.

Classes_____	1	2	3	4	5	A	B	C	D	Average.	
Rates:											
Northbound_____	180	148	110	84	65	81	62	52	43.5	36	86.15
Southbound_____	147	125	104	96	75	79	70	58	46	39	83.90
Proposed rates_____	132	114	88	61	48	58	45	39	34	29	64.80

Complainants' evidence consists, for the most part, of comparisons of density of population as in the case of the proposed Chicago-Colorado scale.

The northbound class rates from Galveston to Denver were considered in *Denver Consumers & Shippers Asso. v. C. & S. Ry. Co.*, consolidated with *Southwestern Shippers Traffic Asso. v. A., T. & S. F. Ry. Co.*, 24 I. C. C., 570, and decided June 6, 1912. We there compared the rates from Galveston to Denver with those prescribed in *Kindel v. N. Y., N. H. & H. R. R. Co.*, *supra*, and *Commercial Club of Salt Lake City v. A., T. & S. F. Ry. Co.*, *supra*, from Chicago to Colorado common points and from the Missouri River to Salt Lake City, respectively. We observed that the class rates to Denver from Galveston were slightly lower than those from Chicago, and materially lower than the rates from the Missouri River to Salt Lake City, and we reached the conclusion that the Galveston rates had not been shown to be unreasonable. The southbound rates from Denver to Galveston and the rates between Denver and points intermediate to Galveston were not considered in that proceeding.

When this route was first opened from Denver to Fort Worth the carriers saw fit for commercial reasons to place Denver on a parity with St. Louis in southbound movements to Texas markets. The northbound rates, on the other hand, were made with relation to those from New Orleans. This parity with St. Louis on traffic southbound has been maintained ever since, but defendants stated that there was now no reason for its continuance. The St. Louis-Texas common-point scale was prescribed in *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463. The average distance from St. Louis to all points taking that scale is about 800 miles, and thus less than the distance from Denver to Galveston by some 300 miles. Defendants insist that the southbound rates should correspond with those northbound.

If, as defendants suggested, the percentage relationships between the classes adopted in *Corporation Commission of New Mexico v. Ry. Co.*, *supra*, and other recent cases should be followed in the

52 I. C. C.

northbound scale, using the first-class rate as a basis, the rates on succeeding classes would be higher and the average of the class rates then in effect from Galveston to Denver, 86.15 cents, would have become 98.45 cents. The average of the class rates from Chicago to Colorado common points in effect at the same time was 87.15 cents and the average distance 1,139 miles, substantially the same as from Galveston to Denver. Defendants' suggested scale appears to be unduly high in comparison.

The rates between Denver and points intermediate to Galveston were alleged to be unreasonable and unduly prejudicial to the extent that they exceeded the rates northbound from Galveston for similar distances. Traffic from Denver to Memphis, Tex., the mid-way point, a distance of 550 miles, moves over the rails of the Colorado & Southern 262 miles in Colorado and 86 miles in New Mexico to Texline, Tex., and thence 202 miles by way of the Fort Worth & Denver City through the Texas panhandle in differential territory to Memphis.

Traffic from Galveston to Memphis, 568 miles, moves north 514 miles through Texas common-point territory to Acme, Tex., a station on the Fort Worth & Denver City, and thence 54 miles through what was differential territory prior to our recent order in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312. In this report the terms "common point" and "differential" are used with reference to interstate rate structures, except as otherwise indicated.

The class rates from Denver to Memphis and other points in Texas on the Fort Worth & Denver City Railway were based on the distance scale prescribed in *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, 26 I. C. C., 520, plus 25 per cent, observing as minima the local Texas two-line distance rates. This scale ends at 450 miles and the rates beyond were graded so as not to exceed the combination of the locals. From Denver to Memphis the class rates were:

Classes-----	1	2	3	4	5	A	B	C	D	E
Rates-----	142	121	101	91	71	74	67	54	44	38

At the time of the hearing Texas common-point territory embraced substantially that part of Texas lying south and east of a line beginning at Acme and extending through Big Spring to Corpus Christi. It has since been extended to points on the line of the Fort Worth & Denver City Railway as far north as Amarillo. There is also a group known as the Dallas-Fort Worth group on northbound traffic to Colorado, comprising points in Texas north of a line drawn from Big Spring on the west to Marshall on the east. In so far as

the rates here under consideration are concerned Texas common-point territory extends from Galveston to Amarillo.

When our report was made, July 7, 1916, in *Railroad Commission of Louisiana v. A. H. T. Ry Co.*, 41 I. C. C., 83, class rates between points in Texas common-point territory were constructed on a distance basis and blanketed beyond 245 miles, except that the rates from Galveston, instead of being made strictly on the distance basis were differentially adjusted over the rates from Houston. These differentials, authorized by the railroad commission of the state of Texas, resulted in lower rates from Galveston for distances up to approximately 200 miles, and higher rates for greater distances, than under the distance scale.

Class rates from Galveston to points in intrastate differential territory, which then included all stations on the Fort Worth & Denver City north of Amarillo, 85 miles north of Memphis and 653 miles from Galveston, were based on the Galveston rates for 245 miles, and varying differentials for the haul in differential territory. The first-class rate was 87 cents from Galveston to Memphis, and 99 cents to Texline, Tex., 769 miles, the most distant point on the Fort Worth & Denver City in differential territory.

In our report last cited we prescribed a distance scale of maximum class rates for application between Shreveport, La., and Texas common-point territory up to 400 miles and blanketed beyond. For hauls partly in differential territory we authorized the addition of certain differentials, depending upon the length of the haul in differential territory, to the rates prescribed for the distance from point of origin to destination. We then found that class rates between Shreveport and points in Texas were, and for the future would be, unduly prejudicial to Shreveport in so far as they exceeded those contemporaneously maintained for like distances between points in Texas. Upon the effective date of our order the following class rates from Galveston to Memphis were established. For convenient comparison we also repeat the rates from Denver to Memphis.

Classes	1	2	3	4	5	A	B	C	D	E
To Memphis, Tex., from—										
Galveston, 568 miles, rates	120	102	84	72	59	62	48	42	36	30
Denver, 550 miles, rates	142	121	101	91	71	74	67	54	44	38

No change of importance was brought about in the Galveston-Memphis rates under the order entered on the rehearing in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, decided January 22, 1918.

It is clearly shown by the evidence that rates north of Memphis for a considerable portion of the distance thence to Denver may reasonably be on a higher level than the rates in Texas common-point

52 I. C. C.

territory. The operating difficulties are more severe and the population per mile of road is less. According to the latest statistics available at the time of the hearing the population of the counties along the line of the Colorado & Southern Railway north of Texline to but not including the city and county of Denver, Colo., was 9 per square mile and 145 per mile of road. The population in the counties served by the direct lines between Galveston and Fort Worth was 39.87 per square mile and 309.5 per mile of road, and in all Texas common-point territory 26.85 per square mile and 330.6 per mile of road. The population in all counties in the Texas pan-handle through which the Fort Worth & Denver City Railway extends was 4.8 per square mile and 97.8 per mile of road. The largest town on the Colorado & Southern Railway between Trinidad, Colo., and Texline, where differential territory begins, has less than 1,000 inhabitants. There are many larger communities on the direct route from Galveston to Texline, including those on the Fort Worth & Denver City Railway in differential territory.

Defendants say that since the conditions of transportation north of Texline are no more favorable than those in Texas differential territory it would be proper to apply the differential basis over the stretch between Amarillo and Pueblo, Colo. The first-class rate of \$1.06 from Denver to Texline would thus have been \$1.28. But defendants go further and suggest that rates for application between points on the Colorado & Southern and Fort Worth & Denver City railways should be based on 130 per cent of the distance scale prescribed in *Railroad Commission of Louisiana v A. H. T. Ry. Co.*, 41 I. C. C., 83, for distances up to 400 miles, subject to the one-line rates applicable between points in differential territory as maxima. For distances over 400 miles they suggest a gradation of 5 cents, first class, for each additional 50 miles up to and including 800 miles, substantially the distance from Denver to Fort Worth. The suggested rates on the classes below first class are obtained by maintaining the percentage relations adopted in the Shreveport scale. Under this method the first-class rate from Denver to Texline prior to June 25, 1918, would have been \$1.33 and to Memphis \$1.51, an increase of 27 cents in the former and 9 cents in the latter.

We have already referred to the difference between the northbound and southbound rates in the Denver-Galveston scales. This difference is reflected in the rates between Denver and points intermediate to Galveston as will be observed from the following table of rates in effect June 24, 1918. In this table the Denver-Galveston rates are stated again for comparative purposes.

52 I. C. C.

Between Denver and—	Miles.	Classes.									
		1	2	3	4	5	A	B	C	D	E
Texline.....	348										
Northbound.....		123	106	90	78	61	63	58	48	38	28
Southbound.....		106	95	82	70	58	59	50	36	31	27
Memphis.....	550										
Northbound.....		148	126	105	84	65	73	62	52	43.5	36
Southbound.....		142	121	101	91	71	74	67	54	44	38
Fort Worth.....	802										
Northbound.....		171	146	110	84	65	78	62	52	43.5	36
Southbound.....		167	143	110	84	65	78	62	52	43.5	36
Galveston.....	1,118										
Northbound.....		150	148	110	84	65	81	62	52	43.5	36
Southbound.....		147	125	104	96	75	79	70	58	46	39

<sup>1</sup> Dallas-Fort Worth group rates.

<sup>2</sup> From Fort Worth and North Fort Worth only.

The distance scale proposed by defendants was for application in both directions and would have removed the inconsistencies in the rate structure, provided the rates to and from Galveston were so realigned as to prevent departures from the long-and-short-haul rule of the fourth section.

As stated above, the distance from Denver to Texline is 348 miles and the first-class rate was \$1.06. In *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 224, we prescribed first-class rates of \$1.05 for a distance of 300 miles and \$1.20 for a distance of 400 miles from Memphis, Tenn., to destinations in southern Arkansas and Louisiana. In *Cities of Marshall and Jefferson, Tex., v. T. & P. Ry. Co.*, 39 I. C. C., 249, we prescribed the same scale for application from Memphis to Marshall and Jefferson, on the eastern border of Texas common-point territory. The rates for 300 miles and 400 miles, graded to produce rates for 350 miles, are compared below with the rates to and from Texline and with defendants' proposed rates.

	Miles.	Classes.									
		1	2	3	4	5	A	B	C	D	E
Memphis-Louisiana scale.....	350	113	96	79	68	57	59	45	40	34	28
Denver to Texline.....	348	106	95	82	70	58	59	50	36	31	27
Texline to Denver.....	123	106	90	78	61	63	58	48	38	31	27
Proposed by defendants.....	133	112	94	81	67	67	70	53	47	40	34

The scale prescribed in the *Memphis Freight Bureau Case* does not extend to distances beyond 500 miles, but by increasing the first-class rate for that distance by 5 cents for an increase of 50 miles, which is the gradation proposed by defendants, the resultant rates compared with rates to and from Memphis, Tex., are:

52 I. C. C.

	Miles.	Classes.									
		1	2	3	4	5	A	B	C	D	E
Memphis-Louisiana scale.....	550	137	116	96	82	68.5	71	55	48	41	34
Denver to Memphis, Tex.....	550	142	121	101	91	71	74	67	54	44	38
Memphis, Tex., to Denver.....		148	126	105	84	65	73	62	52	43.5	36
Proposed by defendants.....		151	128	106	91	75.5	79	60	53	45	38

There is no consistent relationship in the rates between Denver and points in Texas, either northbound or southbound, as witness the following table showing the percentage relationship of the class rates between Denver and Memphis and Galveston:

	Classes.									
	1	2	3	4	5	A	B	C	D	E
Denver to Memphis.....	100	85.2	71.1	64.1	60	52.1	47.2	38	31	26.7
Memphis to Denver.....	100	85.1	71	58.8	43.9	49.3	41.9	35.1	29.4	24.3
Denver to Galveston.....	100	85	70.7	65.3	51	53.7	47.6	39.5	31.3	26.5
Galveston to Denver.....	100	82.2	61.1	46.7	36.1	45	34.4	28.9	24.2	20

The rates in the distance scales prescribed in *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co., supra*, *Cities of Marshall and Jefferson, Tex., v. T. & P. Ry. Co., supra*, and *Railroad Commission of Louisiana v. A. H. T. Ry Co., supra*, bear the following percentage relations to the first-class rates:

Class.....	1	2	3	4	5	A	B	C	D	E
Percentage.....	100	85	70	60	50	52	40	35	30	25

The only change effected by the report on rehearing in the proceeding last above cited was a reduction of fifth class to 48 per cent.

Upon consideration of all the facts of record we are of opinion and find that defendants' class rates between Denver and points in Texas are improperly aligned, and that there is no justification for the maintenance of different bases northbound and southbound. In establishing reasonable and nonprejudicial rates we must bear in mind the adjustment under which rates from St. Louis and defined territories are blanketed to Texas common-point territory. Under the circumstances a continuous mileage scale, progressing normally with distance, seems inappropriate. It would also disrupt the adjustment under which the points of origin have been to a large extent blanketed. Denver and Trinidad, and points between them, are now grouped with respect to class traffic moving to Herman, Tex., on the Fort Worth & Denver City Railway, and all points south thereof on the route to Galveston. Herman is 767 miles from Denver and 554 miles from Trinidad. Pueblo is grouped with Denver on class traffic to Burk, Tex., and points south. Burk is 671 miles

from Denver and 552 miles from Pueblo. Rates from Colorado Springs and Denver are equalized at Bard, Tex., 626 miles from Denver and 552 miles from Colorado Springs, while on first-class traffic and that moving on classes C and D this equalization is carried back as far as Texline, 274 miles from Colorado Springs.

We find that the present class rates maintained by defendants Colorado & Southern Railway, Fort Worth & Denver City Railway, Houston & Texas Central Railroad, Trinity & Brazos Valley Railway, and Galveston, Harrisburg & San Antonio Railway between Denver and points grouped therewith and Galveston and points in Texas intermediate thereto are, and for the future will be, unjust, unreasonable, and unduly prejudicial to complainants to the extent that they exceed by more than 25 per cent the following:

Between Denver and point grouped therewith and—	Classes:									
	1	2	3	4	5	A	B	C	D	E
Texline.....	105	89	73.5	63	50.5	54.5	2	37	31.5	26
Amarillo.....	175	106	87.5	75	60	65	50	43.5	37.5	31
Childress.....	135	114.5	94.5	81	65	70	54	47	40.5	34
Wichita Falls.....	145	121	101.5	87	69.5	75	58	50.5	43.5	35
Fort Worth.....	155	131.5	103.5	93	74	80.5	62	54	46.5	39
South of Fort Worth.....	165	140	115.5	99	79	86	66	58	49.5	41

We have not referred in the preceding discussion to the class rates between Denver and points in New Mexico on the line of the Colorado & Southern. The class E rates only are alleged to have been unreasonable and unduly prejudicial and this allegation rests on a comparison with the class E rates for similar distances from Galveston at the time this complaint was filed. By reason of changes in the rates from Galveston the rates on all classes between Denver and stations in New Mexico became lower for corresponding distances. We do not find these rates to have been or to be unreasonable or otherwise unlawful.

#### E. OCEAN-RAIL AND RAIL-OCEAN-RAIL CLASS AND COMMODITY RATES FROM ATLANTIC SEABOARD TERRITORY VIA GALVESTON TO COLORADO COMMON POINTS.

We are asked to find that the ocean-rail and rail-ocean-rail class and commodity rates from Atlantic seaboard territory<sup>1</sup> via Gal-

<sup>1</sup> In its geographical sense, as here used, the term "Atlantic seaboard territory" has limits no broader than those fixed by the specific publication of each point of origin in W. J. Sedgman, agent, tariff No. I. C. C. 110, supplements thereto or releases thereof; and the terms "ocean-rail" and "rail-ocean-rail" are used, respectively, merely to indicate, within the limits of this same tariff, that the rates and rate bases under discussion have application not alone from inland and seaboard ports, but also from inland points reached by rail.

veston to Denver and points taking the same rates are unreasonable and unduly prejudicial. The following table sets forth the rates in effect on the first five classes when the complaint was filed, the changes that have since occurred, and the rates proposed by complainants.

CLASS RATES FROM ATLANTIC SEABOARD TO DENVER VIA GALVESTON.

Classes -----	1	2	3	4	5
Rates -----	234	191	150	113.5	90
Effective August 1, 1917-----	247.5	203.5	158	119	95
Effective June 25, 1918-----	309.5	254.5	197.5	149	119
Present rates-----	334.5	274.5	212.5	159	129
Proposed by complainants-----	194	169	130	92	74

The ocean-rail and rail-ocean-rail class rates effective when this proceeding was instituted were substantially the same as those considered and approved in *Southwestern Shippers Traffic Asso. v. A., T. & S. F. Ry. Co., supra*. Effective August 1, 1917, the eastern components used in making the through rates were increased 15 per cent. These through rates remained in force until June 25, 1918, when they were advanced 25 per cent under General Order No. 28, issued by the Director General. Subsequently, on August 10, 1918, the Director General having requested and received our approval for filing by carriers under federal control of schedules establishing joint water-and-rail rates on the same level as the all-rail rates between the same points, the through rates were again increased and are now based on the lowest combination of all-rail rates from New York to Colorado common points.

When the complaint was filed, and until August 10, 1918, ocean-rail class rates from Atlantic seaboard territory to Colorado common points were differentially related to the all-rail rates from New York. Complainants, in their proposed rates, employ the same general basis for constructing through rates but substitute for the all-rail basic rates on the first four classes those which would result from combination of the New York-Chicago scale and their proposed rates from Chicago to Colorado, less the ocean-rail differentials under all-rail rates. This produces their proposed first-class ocean-rail rate of \$1.94. The rates on classes lower than fourth class were obtained by determining the percentage which each through rate, published in a former tariff, bore to the fourth-class rate, and applying that percentage to the proposed fourth-class rate.

The proposed commodity rates bear the same relationship to the proposed fourth-class rate that the commodity rates prior to June 25, 1918, bore to the fourth-class rate then in force. This was the



method employed by the complainants in determining their proposed commodity rates from Chicago.

The evidence offered by complainants, which relates to the rates in effect in April, 1916, is not persuasive that they were unreasonable or unduly prejudicial. The proof in this respect is based almost wholly upon the alleged unreasonableness of the class rates contemporaneously maintained from Chicago. As stated by counsel on brief, "If we have established the justice of our proposed rates from Chicago to Denver we have also justified the proposed rates, so far as the first four classes are concerned, from Atlantic seaboard to Colorado common points." But the premise having failed, the conclusions based thereon must likewise fail.

As stated above, these rates have been advanced by successive increases to the level of the lowest combination of all-rail rates from New York to Colorado common points. In *The Fifteen Per Cent Case*, 45 I. C. C., 303, 324, we called attention to evidence regarding greatly increased costs of operation, diversion of traffic to other channels, and high marine insurance which tended to justify the maintenance of joint rail-and-water rates on a level not higher than the all-rail rates between the same points. There is nothing of record to show that the conditions mentioned no longer obtain, and upon this record we are unable to find that the through rates, both class and commodity, from Atlantic seaboard territory to Colorado common points via Galveston in force when the complaint was filed, or as subsequently increased, were, or are, unjust, unreasonable, or unduly prejudicial except to the extent that these rates exceed the aggregate of the class or commodity rates, subject to the act to regulate commerce, contemporaneously in effect from Atlantic seaboard territory to Galveston, and the class or commodity rates from Galveston to Denver and points taking the same rates, over the route of movement. To that extent we find that they are and for the future will be unjust, unreasonable, and unduly prejudicial.

**F. CLASS RATES FROM DENVER AND OTHER POINTS IN COLORADO TAKING THE SAME RATES TO DESTINATIONS IN ARIZONA, CALIFORNIA, IDAHO, MONTANA, NEVADA, NEW MEXICO, OREGON, SOUTH DAKOTA, TEXAS, UTAH, WASHINGTON, AND WYOMING.**

The subdivision of the complaint next to be considered attacks class rates from Denver and other points in Colorado taking Denver rates to destinations in the states named in the above caption. In the following pages of this report wherever Denver is referred to

52 I. C. C.

in connection with outbound rates it should be understood as including other points in Colorado taking the same rates. It is asserted that Chicago and points on the rivers are unduly preferred in distributing articles throughout the Rocky Mountain region by reason of the excessive outbound class rates maintained by defendants on similar articles shipped from Denver. Much is said concerning the "reload" charge at Denver. By that term is meant the difference between the combination of the carload rate to Denver and the less-than-carload rate from Denver to final destination and the through less-than-carload rate from the same point of origin to the same destination. It is alleged that in the case of Denver the reload is higher than at eastern jobbing points, particularly Chicago and points on the rivers.

Complainants propose the establishment of class rates from Denver to and beyond certain selected points on the different routes leading from Denver based on a mileage prorate of the rates from Chicago to the same destinations, via usual routes, with 5 cents per 100 pounds added for terminal charges. The proposed rates to points intermediate to those designated as initial points are graded with relation to the rates effective prior to June 25, 1918. For example, the distance from Denver to Gallup, N. Mex., by way of the Santa Fe through La Junta, Colo., was found to be 46.07 per cent of the short-line distance from Chicago to Gallup. This percentage applied to the first-class rate of \$2.75 then in effect from Chicago, plus 5 cents, would produce the first-class rate of \$1.32 sought from Denver to Gallup, and in like manner through each of the remaining classes.

Defendants urged many objections to this proposed plan, chief among which are that rates so constructed make no allowances for the dissimilar character of the country west of Denver and would produce substantially the same earnings per ton-mile as the Chicago rates, notwithstanding the much longer haul from Chicago, and that the combination of complainants' proposed rates to and from Denver would result in many instances in reductions in the through rates.

It is clear that we can not accept the method suggested by complainants for constructing rates to destinations west of Denver. The conditions of transportation are less favorable than those obtaining on the prairie lines east of Denver, the cost of operation is greater, and the distances from Denver to all the destinations are less than from Chicago. These facts are sufficient to warrant a higher level of rates than would result from complainants' proposed mileage prorate of the Chicago rates with 5 cents added for the extra terminal expense.

The rates considered are those applying over the lines named in the margin and to the destinations there indicated.<sup>1</sup> We will consider them as nearly as may be convenient in the order named.

(a) CLASS RATES FROM DENVER TO STATIONS IN NEW MEXICO, ARIZONA, AND TEXAS ON THE ATCHISON, TOPEKA & SANTA FE RAILWAY; SANTA FE, PRESCOTT & PHOENIX RAILWAY; RIO GRANDE, EL PASO & SANTA FE RAILROAD; AND EL PASO & SOUTHWESTERN RAILROAD.

The line of the Atchison, Topeka & Santa Fe Railway extends south from Denver through Pueblo, thence east to La Junta, Colo., thence southwest through Trinidad into New Mexico and west into Arizona. A branch extends from Isleta, N. Mex., south to El Paso, Tex., with a short branch leaving it at Rincon, N. Mex., and extending west through Deming to Silver City, N. Mex. Connection is made at El Paso with the El Paso & Southwestern Railroad.

The Santa Fe, Prescott & Phoenix Railway extends south from Ash Fork, Ariz., on the main line of the Santa Fe, through Prescott to Phoenix. The destinations specified in the complaint are those on the main line of the Santa Fe from Raton, N. Mex., the first station of consequence south of the Colorado-New Mexico state line, to Ash Fork; on the Santa Fe, Prescott & Phoenix Railway south of Ash Fork; on the line extending from Isleta to El Paso, including Deming on the branch from Rincon; and on the El Paso & Southwestern Railroad west of El Paso as far as Tucson, Ariz.

Effective January 15, 1917, after this proceeding was instituted, the rates to points in New Mexico east and south of Albuquerque were revised. The first and second class rates were quite generally increased while as a rule reductions were made in the remaining class rates. In making this revision defendants adopted the class relationship maintained in *State Corporation Commission of New Mexico v. Ry. Co., supra*, which had also been adopted by that commission on intrastate traffic. The following table shows the distances from Denver, as stated by complainants, and the rates to the points specified in the complaint just prior to the effective date of General Order No. 28.

<sup>1</sup> Atchison, Topeka & Santa Fe, Santa Fe, Prescott & Phoenix, Rio Grande, El Paso & Santa Fe, and El Paso & Southwestern to stations in New Mexico, Arizona, and Texas; Chicago, Burlington & Quincy, Colorado & Southern, Chicago & North Western, and Wyoming & Northwestern to stations in Nebraska, South Dakota, Wyoming, and Montana; Union Pacific, Oregon Short Line, San Pedro, Los Angeles & Salt Lake, Bingham & Garfield, Denver & Rio Grande, Bullfrog Goldfield, Tonopah & Goldfield, Las Vegas & Tonopah, Southern Pacific, Nevada Northern, Great Northern, Butte, Anaconda & Pacific, and Oregon-Washington Railroad & Navigation Company to stations in Wyoming, Utah, Nevada, Idaho, Montana, Oregon, Washington, and California; and Denver & Rio Grande to stations in New Mexico.

*Class rates from Denver to destinations named below.*

From Denver to—	Miles.	Class rates prior to June 25, 1918.									
		1	2	3	4	5	A	B	C	D	E
<b>Stations on the main line of the Atchison, Topeka &amp; Santa Fe Railway:</b>											
Raton, N. Mex.....	285	83	71	58	50	41.5	43	33	29	25	21
Springer, N. Mex.....	326	83	71	58	50	41.5	43	33	29	25	21
Watrous, N. Mex.....	376	98	83	69	59	49	51	39	34	29	24.5
Las Vegas, N. Mex.....	396	103	88	72	62	51.5	53.5	41	36	31	26
Domingo, N. Mex.....	491	123	105	86	74	61.5	64	49	43	37	31
Albuquerque, N. Mex.....	528	123	105	86	74	61.5	64	49	43	37	31
Gallup, N. Mex.....	687	172	157	147	133	112	112	87	70	66	60
Holbrook, Ariz.....	782	210	182	154	133	112	112	87	70	66	60
Winslow, Ariz.....	815	210	182	154	133	112	112	87	70	66	60
Ash Fork, Ariz.....	930	210	182	154	133	112	112	87	70	66	60
<b>Stations on the line to El Paso:</b>											
Rincon, N. Mex.....	706	150	128	105	90	75	78	60	52.5	45	37.5
El Paso, Tex.....	782	158	136	115	100	77	79	74	60	47	40
Deming, N. Mex.....	759	185	170	144	131	105	105	80	65	60	58
<b>Stations on the Santa Fe, Prescott &amp; Phoenix Railway:</b>											
Prescott, Ariz.....	967	210	182	154	133	112	112	87	70	66	60
Phoenix, Ariz.....	1,123	210	182	154	133	112	112	87	70	66	60
<b>Stations on the El Paso &amp; Southwestern Railroad:</b>											
Douglas, Ariz.....	915	210	182	154	133	112	112	87	70	66	60
Bisbee, Ariz.....	944	210	182	154	133	112	112	87	70	66	60
Tombstone, Ariz.....	983	217	188	160	138	116	116	91	74	70	64
Tucson, Ariz.....	1,039	210	182	154	133	112	112	87	70	66	60

The above class rates from Denver to stations in New Mexico between Raton and Albuquerque and between Albuquerque and the New Mexico-Texas state line were based on the intrastate distance scale prescribed by the State Corporation Commission of New Mexico, using the short-line mileage from Colorado Springs in computing the rates to points east of Albuquerque and the short-line mileage from Pueblo in computing the rates to Albuquerque and points south thereof. The distance from Denver to Albuquerque via the Santa Fe is 528 miles; from Pueblo by the short line through Trinidad it is approximately 357 miles; and the rates were figured on the New Mexico scale for the latter distance.

The rates to points in New Mexico between Raton and Albuquerque and south of Albuquerque on the line to El Paso are as low as or lower than those hereinabove found reasonable for application for corresponding distances between Denver and stations in Texas on the Fort Worth & Denver City Railway. We find these rates not unreasonably high.

Traffic from Denver to El Paso by way of the Santa Fe is delivered to the Rio Grande, El Paso & Santa Fe Railroad at the boundary line between New Mexico and Texas. The movement in Texas is for a distance of about 20 miles. The rates from Denver to the few points on the Rio Grande, El Paso & Santa Fe Railroad, including El Paso, are not on the same basis as those to points in

New Mexico immediately to the north. On June 24, 1918, the first-class rate to La Tuna, the first station in Texas, was 2 cents higher than the first-class rate to Berino, the last station in New Mexico, but the third and fourth class rates were 6 cents higher. These rates to Texas points on the Rio Grande, El Paso & Santa Fe should be in harmony with those in effect to New Mexico stations north thereof on the Santa Fe.

The rates to Deming, 53 miles from Rincon on the branch to Silver City and a point specifically mentioned in the complaint, are also out of line. The spread between the first-class rates from Denver to Rincon and to Deming was 35 cents. This is excessive for the short additional haul.

The revision in the class rates to destinations in New Mexico, hereinabove referred to, was not extended to stations west of Albuquerque. Consequently, a basis obtains on the line of the Santa Fe from Albuquerque west into Arizona different from that made effective to points east and south of Albuquerque. The first-class rate from Denver to Gallup, for example, 159 miles west of Albuquerque, was, at the time of this complaint, \$1.72 and the fifth-class rate \$1.12. Based on the relationship between the rates in effect elsewhere in New Mexico the fifth-class rate would have been 86 cents. The fourth-class rate of \$1.33 was higher under the \$1.72 scale to Gallup than defendants maintained from Chicago to El Paso under a scale of \$2.20, first class.

The rates from Denver to stations on the Santa Fe between Holbrook and Ash Fork, distant 782 and 930 miles, respectively, were the same as those prescribed in *Railroad Commission of Nevada v. S. P. Co.*, 19 I. C. C., 238, from Denver and other points in trans-continental group J to stations between Winnemucca and Reno, Nev., not including the former. The short-line distances from Denver to Winnemucca and Reno are 942 and 1,116 miles, respectively. In the case cited we also prescribed a scale of class rates beginning with \$2, first class, for application from Denver to stations between Winnemucca and the Utah-Nevada state line. The short-line distances from Denver to points in this group are from 714 miles to 942 miles, closely approximating the distances to Holbrook and Ash Fork.

In *Maricopa County Commercial Club v. S. F., P. & P. Ry. Co.*, 19 I. C. C., 257, we had under consideration class rates from eastern defined territories to Phoenix. We there prescribed the same rates from Missouri River territory to Phoenix as had been prescribed in *Railroad Commission of Nevada v. S. P. Co.*, *supra*, to Reno. The rates from Denver to Phoenix were not attacked in the complaint of the Maricopa County Commercial Club, but as the short-line dis-

tances from Denver to Phoenix and Reno are very nearly the same and equal rates had been prescribed to both points from eastern territories defendants applied from Denver to Phoenix the Denver-Reno scale of rates. The rate parity then established exists to-day.

Upon consideration of the record we are of opinion and find that the present class rates from Denver and Denver rate points in Colorado to the stations named below in New Mexico, Arizona, and Texas on the Atchison, Topeka & Santa Fe Railway, Santa Fe, Prescott & Phoenix Railway, and Rio Grande, El Paso & Santa Fe Railroad are, and for the future will be, unjust, unreasonable, and unduly prejudicial to the extent that they exceed by more than 25 per cent those stated below. Rates to intermediate points should be graded with relation to those prescribed to more distant points.

	Classes.									
	1	2	3	4	5	A	B	C	D	E
A., T. & S. F. Ry.:										
Gallup, N. Mex. ....	168	143	118	101	81	87	67	59	50	42
Deming, N. Mex. ....										
Holbrook, Ariz. ....	200	170	140	120	96	104	80	70	60	50
Winslow, Ariz. ....										
Ash Fork, Ariz. ....										
S. F., P. & P. Ry.:										
Prescott, Ariz. ....	210	179	147	126	101	109	84	74	63	53
Phoenix, Ariz. ....										
R. G., E. P. & S. F. R. R.:										
La Tuna, Tex. ....	158	134	112	95	76	82	63	55	47	40
El Paso, Tex. ....										

There is no basis for a finding that the rates to other points on the lines of those carriers are unreasonable or otherwise unlawful. The record is silent in so far as rates to points on the El Paso & Southwestern Railroad are concerned, but based upon comparisons of distances it would appear that class rates from Denver to Douglas and Bisbee should not exceed those from Denver to Ash Fork, and that the rates from Denver to Tombstone and Tucson should not exceed those from Denver to Prescott and Phoenix. We are unable, however, to require the establishment of such rates upon the present record.

(b) CLASS RATES FROM DENVER TO SANTA FE, N. MEX., VIA THE DENVER & RIO GRANDE RAILROAD.

Among other class rates attacked are those applying from Denver to Santa Fe, N. Mex., via the Denver & Rio Grande Railroad. On January 15, 1917, after this proceeding had been instituted, the rates to and from Santa Fe were materially changed. The rates in effect when the complaint was filed, those established January 15, 1917, and the rates proposed by complainants, are stated below:

52 L. C. C.

*Class rates between Denver and Santa Fe, N. Mex.*

	Classes.									
	1	2	3	4	5	A	B	C	D	E
Prior to Jan. 15, 1917:										
Northbound.....	125	112	103	80	74	75	58	42	40	34
Southbound.....	88	85	82	75	74	75	58	42	40	34
Effective Jan. 15, 1917:										
Both directions.....	123	105	86	74	61.5	64	49	43	37	31
Proposed rates.....	74	63	52	44	38	40	32	29	26	23

The route of the Denver & Rio Grande from Denver to Santa Fe consists of 247 miles of standard-gauge tracks and 154 miles of narrow-gauge. The total distance is 401 miles. The line passes through a mountainous section of southern Colorado, reaching an elevation of 9,247 feet at La Veta pass. The maximum gradient southbound is 3 per cent and northbound 4 per cent. It is stated that on no other portion of the Denver & Rio Grande system is the traffic density as light as on the Santa Fe branch. Owing to the unusual difficulties of operation and the light density of traffic the State Corporation Commission of New Mexico has permitted the Denver & Rio Grande to maintain a higher scale of rates locally in New Mexico than that established by the state authorities for application on the lines of other carriers operating within that state.

The \$1.23 scale between Denver and Santa Fe was the same as that prescribed by the New Mexico commission for distances between 351 and 375 miles. The New Mexico intrastate first-class rate for a distance equal to that from Denver to Santa Fe was \$1.32. The contention of complainants that the class rates to Santa Fe were unreasonable and unduly prejudicial is not sustained upon this record. Nor do we find the present rates, which are based on those in effect June 24, 1918, to be unlawful.

(c) CLASS RATES FROM DENVER TO STATIONS IN NEBRASKA, SOUTH DAKOTA, WYOMING, AND MONTANA ON THE CHICAGO, BURLINGTON & QUINCY RAILROAD, CHICAGO & NORTH WESTERN RAILWAY, WYOMING & NORTH WESTERN RAILWAY, AND COLORADO & SOUTHERN RAILWAY.

The rates here to be considered are those which apply from Denver to stations on the Chicago, Burlington & Quincy Railroad from Sidney, Nebr., through Alliance, Nebr., and Sheridan, Wyo., including points on the lines from Edgemont, S. Dak., to Deadwood, S. Dak., and from Wendover, Wyo., through Casper and Thermopolis, Wyo., to Billings, Mont.; stations on the Chicago & North Western Railway and Wyoming & North Western Railway west of Orin Junction, Wyo.; and stations on the Colorado & Southern Railway

52 I. C. C.

between Cheyenne, Wyo., and Wendover. The class rates and the short-line distances from Denver to a few representative points are stated in the following table:

From Denver to—	Miles.	Class rates.									
		1	2	3	4	5	A	B	C	D	E
<b>C., B. &amp; Q. R. R.:</b>											
Sidney, Nebr. ....	163	55	46	39	32	27	27	25	23	21.3	14.5
Northport, Nebr. ....	204	72	60	54	45	38.3	38	29.8	25.5	21.3	14.5
Alliance, Nebr. ....	238	85	72.3	59.5	51	38.3	42.5	29.8	25.5	21.3	14.5
Crawford, Nebr. ....	285	96.3	81.8	67.4	57.8	43.3	46	33.6	28.9	24	16.4
Edgemont, S. Dak. ....	349	105	91.4	75.3	64.5	48.4	46	37.6	32	26.9	18.3
Deadwood, S. Dak. ....	456	114	99	87	71	55	51	49	40	30.5	24.5
Sheridan, Wyo. ....	571	152	131	107	89	74	74	59	49	44	31.5
<b>C. &amp; S. Ry. and C., B. &amp; Q. R. R.:</b>											
Orin Junction, Wyo. ....	268	90	76	63	50	41	45	36	29	22.5	18
Douglas, Wyo. ....	283	90	76	63	50	41	45	36	29	22.5	18
Casper, Wyo. ....	336	100	84	70	58	46	50	40	32	25	20
Thermopolis, Wyo. ....	470	120	101	84	70	55	60	48	38	30	24
Laurel, Mont. ....	650	152	131	107	89	74	76	61	49	38	30
Billings, Mont. ....	665	152	131	107	89	74	76	61	49	38	30
<b>C. &amp; N. W. Ry. (W. &amp; N. W. R. R.):</b>											
Shoshoni, Wyo. ....	438	122.5	103	86	71	56	61.5	49	39	31	25
Hudson, Wyo. ....	474	137.5	115.5	96.5	79	63.5	69	55	44	34.5	27.5
Lander, Wyo. ....	483	140	118	98	81.5	64.5	70	56	45	35	28
<b>C. &amp; S. Ry.:</b>											
Chugwater, Wyo. ....	185	70	58	49	41	38	36	30	24	22	16
Wheatland, Wyo. ....	211	79	65	54	45	40	39	33	27	22	17
Hartville Junction, Wyo. ....	233	87	71	59	49	40	42	35	28	22	17

As a general rule the rates from Denver to points on the Burlington and Chicago & North Western in the territory mentioned are relatively higher than the rates from Omaha. Defendants show that the average of the first four class rates from Denver to a number of representative points in Wyoming and Montana is, to Burlington stations 69.1 per cent, and to Chicago & North Western stations 66.3 per cent, of the average of the first four class rates from Omaha to the same points, and the average distances from Denver are 63.7 per cent and 58.9 per cent, respectively, of the average distances from Omaha. Defendants argued that the slightly higher ton-mile earnings produced under the rates from Denver were proper in view of the shorter distances.

Omaha is the chief competitor of Denver throughout this territory, and as tending to show that the rate adjustment was not unduly preferential to Omaha defendants compared the volume of less-than-carload traffic originating at both points during the fiscal year ended June 30, 1916, destined to the territory here under consideration. Of the total less-than-carload freight received at stations on the Burlington between Brush, Colo., and Alliance, Nebr., during the period above stated 25.6 per cent originated at Denver and 27 per cent at Omaha. Of that received at stations on the Big Horn Basin line between Northport, Nebr., and Billings, Mont., 29.5 originated at Denver and 13.4 at Omaha. Denver's proportion to points between



Alliance and Billings was 11.1 per cent, as compared with 17.4 per cent from Omaha. The rates from Denver to points in the Big Horn Basin were established in 1914 after a conference with a number of Denver shippers and were accepted by them as satisfactory.

Defendants contend that, based on differences in transportation conditions and traffic density, rates from Denver to destinations in northwestern Nebraska, South Dakota, Wyoming, and Montana should exceed 125 per cent of the mileage scale prescribed in *The Missouri River-Nebraska Cases, supra*. With but few exceptions, however, they were established on a basis which was lower than 125 per cent of that scale, but where that basis was exceeded at points on the Burlington the rates are concededly too high. After the hearing the rates to many of the stations on the Burlington which were more than 125 per cent of the Missouri River-Nebraska scale were reduced to that basis.

Billings, 665 miles from Denver via the Colorado & Southern to Wendover, thence via the Burlington, is the most distant point to which the rates here under consideration apply. The first-class rate from Denver to Billings, established by the Burlington, was \$1.52.

The first-class rate from Denver to Billings was 113.4 per cent of the first-class rate for a like distance under the Missouri River-Nebraska scale, from Denver to Alliance 125 per cent, and to Sidney 98.2 per cent.

The record does not disclose the manner of constructing rates to points on the Chicago & North Western and Wyoming & North Western railways west of Orin Junction. Those rates were on a higher level than rates to points in Wyoming on the Burlington at equal distances from Denver. The average rate to Hudson, for example, 474 miles from Denver on the Wyoming & North Western, was 72.2 cents, and to Thermopolis, 470 miles from Denver on the Burlington, 63 cents. No representative of the Chicago & North Western Railway appeared at the hearing and such evidence as was offered in support of the rates to destinations on the line of that defendant consisted of comparisons with the distance scales prescribed in *Corporation Commission of Oklahoma v. A. & S. Ry. Co., supra*, *Railroad Commission of Louisiana v. St. L. S. W. Ry. Co., supra*, and *The Missouri River-Nebraska Cases, supra*. It appears from these comparisons that the average rate from Denver to Shoshoni, a distance of 438 miles, was higher than the average rates for similar distances from Oklahoma and Shreveport to Texas points and slightly less than the average rate based on 125 per cent of the Missouri River-Nebraska scale. West of Shoshoni the rates exceeded 125 per cent of that scale.

The record does not warrant a finding that rates to the points named on the Chicago & North Western, Wyoming & North Western, Colorado & Southern, and, except as hereinbelow stated, Chicago, Burlington & Quincy railways, were, or are, unreasonable or unlawful. We find, however, that the present rates from Denver and points in Colorado taking the same rates to the stations on the Burlington named below are, and for the future will be, unjust, unreasonable, and unduly prejudicial to the extent that they exceed by more than 25 per cent the following rates:

From Denver to—	Classes.									
	1	2	3	4	5	A	B	C	D	E
Northport, Nebr.....	75	63.7	52.5	45	33.7	37.5	26.2	22.5	18.7	12.7
Alliance, Nebr.....	78	66.3	54.6	46.8	35.1	39	27.3	23.4	19.5	13.3
Crawford, Nebr.....	89	75.6	62.3	53.4	40	44.5	31.1	26.7	22.2	15.1
Edgemont, S. Dak.....	99	84.1	69.3	59.4	44.5	49.5	34.6	29.7	24.7	16.8
Sheridan, Wyo.....	137	116.5	95.9	82.2	61.6	68.5	48	41.1	34.2	23.3

Rates to intermediate points should be graded accordingly.

(d) CLASS RATES FROM DENVER TO STATIONS IN WYOMING, UTAH, IDAHO, MONTANA, OREGON, WASHINGTON, NEVADA, AND CALIFORNIA ON THE UNION PACIFIC SYSTEM; DENVER & RIO GRANDE RAILROAD; SOUTHERN PACIFIC; BINGHAM & GARFIELD RAILWAY; GREAT NORTHERN RAILROAD; BUTTE, ANACONDA & PACIFIC RAILWAY; SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD; NEVADA NORTHERN RAILWAY; BULLFROG GOLDFIELD RAILROAD; LAS VEGAS & TONOPAH RAILWAY; AND TONOPAH & GOLDFIELD RAILROAD.

As already stated, complainants alleged that the class rates from Denver to points on the lines of the above-named defendants were unreasonable and unduly prejudicial to the extent that they exceeded a mileage prorate of the rates from Chicago to the same points plus 5 cents per 100 pounds. In many instances the rates asked are lower per mile than complainants seek to have established between Denver and points on the prairie lines east thereof. We have said that in our opinion the conditions west of Denver justify the maintenance of higher rates than those sought by complainants. We therefore need not refer again to these proposed rates.

It would serve no useful purpose to set forth in detail all the destinations to which reductions are sought. In the following table we give the distances and rates from Denver to a few of the more important points specified by complainants:

52 I. C. C.

From Denver to—	Miles.	Class rates.									
		1	2	3	4	5	A	B	C	D	E
Union Pacific R. R.:											
Cheyenne, Wyo.....	106	45	40	35	30	27	27	21	17	13	11.75
Granger, Wyo.....	431	130	111	98	82	65	68	52	46	33	27
Ogden, Utah.....	577	154	131	115	96	79.5	79.5	62	56	38	31.5
Oregon Short Line:											
Kemmerer, Wyo.....	471	140	119	105	88	70	74	56	49	35	29
Pocatello, Idaho.....	645	163	139	116	98	81	81	65	56	41	34
Butte, Mont.....	908	170	145	120	102	85	85	67	56	50	44
Huntington, Oreg.....	972	213	184	159	137	109	109	89	73	66	56
Oregon-Washington R. R. & Nav. Co.:											
Pendleton, Oreg.....	1,146	240	208	176	152	120	116	100	80	76	68
Spokane, Wash.....	1,360	240	208	176	152	120	116	100	80	76	68
Seattle, Wash.....	1,547	280	225	190	160	140	140	107	83	80	73
Denver & Rio Grande R. R.:											
Green River, Utah.....	1,555	154	131	115	96	79.5	79.5	62	56	38	31.5
Thistle, Utah.....	1,681	154	131	115	96	79.5	79.5	62	56	38	31.5
Ogden, Utah.....	1,782	154	131	115	96	79.5	79.5	62	56	38	31.5
Southern Pacific Co.:											
Cobre, Nev.....	714	200	172	146	126	106	106	83	67	63	53.5
Winnemucca, Nev.....	942	200	172	146	126	106	106	83	67	63	57
Reno, Nev.....	1,116	210	182	154	133	112	112	87	70	66	60
San Francisco, Cal.....	1,360	260	225	190	160	140	140	107	83	80	67.5
San Pedro, Los Angeles & Salt Lake R. R.:											
Millford, Utah.....	821	258	219	193	160	135.5	135.5	104	92	64	52.5
Callente, Nev.....	938	260	225	190	160	140	140	107	83	80	67.5
Las Vegas, Nev.....	1,064	260	225	190	160	140	140	107	83	80	67.5
Los Angeles, Cal.....	1,398	260	225	190	160	140	140	107	83	80	67.5
Bullfrog Goldfield R. R.:											
Goldfield, Nev.....	1,261	365	324	282	249	214	214	152	134	114	108
Tonopah & Goldfield R. R.:											
Tonopah, Nev.....	1,292	365	324	282	249	214	214	152	134	114	108
Nevada Northern Ry.:											
East Ely, Nev.....	853	297	262	229	200	172	172	130	110	100	90.5
Bingham & Garfield Ry.:											
Magna, Utah.....	631	172	147	129	108	89.5	89.5	70	63	43	36.5
Butte, Anaconda & Pacific Ry.:											
Anaconda, Mont.....	919	170	145	120	102	85	85	67	56	50	44

<sup>1</sup> Via standard-gauge route of the Denver & Rio Grande R. R.

(1) *Stations on the Union Pacific system and Denver & Rio Grande Railroad.*—The Union Pacific system consists of the Union Pacific Railroad, the Oregon Short Line, and the Oregon-Washington Railroad & Navigation Company. The Union Pacific extends from Denver to Ogden, Utah; the Oregon Short Line from Salt Lake City, Utah, and Granger, Wyo., to Huntington, Oreg., with numerous branches, including a line from Pocatello, Idaho, to Butte, Mont. The line of the Oregon-Washington Railroad & Navigation Company extends westward from Huntington to Portland, Oreg., and Seattle, Wash., and north from Pendleton, Oreg., to Spokane, Wash.

The record and tariffs on file with us show that rates from Denver to Union Pacific and Oregon Short Line stations have been materially reduced in recent years. From November, 1902, until August, 1906, the first-class rate from Denver to Ogden, a Utah common point, was \$1.85; from August, 1906, until January, 1907, \$1.80. Effective January 21, 1907, it was reduced to \$1.64, or 80 per cent of the Missouri River-Utah rate of \$2.05. This rate of \$1.64 was con-

52 I. C. C.

sidered and condemned in *Kindel v. N. Y., N. H. & H. R. R. Co.*, *supra*, but for reasons stated in the report in that proceeding no order was entered requiring its reduction. The first-class rate from San Francisco to Utah points was at that time on the basis of 75 per cent of the Missouri River-Utah first-class rate and the carriers deemed it proper to fix the Denver-Utah rate on the same basis. This action led to the establishment of the rate of \$1.54, which became effective March 1, 1907. The rates from San Francisco to Ogden were the same as the rates from Denver to Ogden with the exception of third-class and classes D and E, which were higher from San Francisco. The distance from San Francisco to Ogden is 782 miles, 206 miles more than the distance from Denver to Ogden via the short line of the Union Pacific and exactly the same as the distance via the Denver & Rio Grande.

Reductions were also made in the class rates to other stations on the Union Pacific. The average reduction in the first-class rates from Denver to 12 stations between Denver and Ogden during the past 12 years is shown to be 27.6 cents, or 21.8 per cent. Similar reductions have been made in the class rates to points served by the Oregon Short Line.

Considerable testimony was addressed to the operating conditions west of the Colorado common-point line as justifying the present level of the rates. It was shown that on the Union Pacific the total rise and fall between Omaha and Cheyenne, 507 miles, is slightly over 5,100 feet and between Denver and Ogden, 577 miles, 14,140 feet. The maximum grade on the Union Pacific between Denver and Ogden is 1.55 per cent as compared with 0.7 per cent between the Missouri River and Cheyenne. Heavier grades are encountered on the Oregon Short Line and Oregon-Washington Railroad & Navigation Company than exist on the Union Pacific. It is argued that these and other operating difficulties fully justified the maintenance of these rates.

The average short-line distance from Denver to Utah common points, including within that designation Ogden, Midvale, Lehi, Springville, Salt Lake City, Park City, Provo, and Payson, is stated to be 614 miles. In *Traffic Bureau of Merchants Exchange v. S. P. Co.*, 19 I. C. C., 259, we prescribed a first-class rate of \$1.54 from Sacramento, Cal., to a group of stations on the Southern Pacific west of Ogden distant from 488 to 692 miles from Sacramento. By comparison with this rate it does not appear that \$1.54 for an average distance of 614 miles from Denver to Utah common points over the main range of the Rocky Mountains is excessive.

52 I. C. C.

In the adjustment of rates to Denver & Rio Grande stations the rates to Ogden are maintained at all intermediate stations west of the Colorado-Utah boundary. The first station in Utah is Westwater, distant 488 miles from Denver. The Denver & Rio Grande earnestly insists that the Utah common-point rates applied to Westwater are reasonable for the service performed and that a reduction at Westwater would entail corresponding reductions, both in the rates from Denver to points in Colorado and from Utah common points eastward. This, it is said, would result in severe and unwarranted reductions in its revenues. It is urged that if the rate of \$1.54 from Sacramento to Halleck, Nev., a distance of 488 miles, prescribed in *Traffic Bureau of Merchants Exchange v. S. P. Co., supra*, was reasonable for the transportation on the line of the Southern Pacific the same rate must be reasonable for the movement of traffic an equal distance on the line of the Denver & Rio Grande.

We are not convinced upon the record that the rates from Denver to Utah common points via the Union Pacific and Denver & Rio Grande and from Denver to other points in Utah on the Denver & Rio Grande were unjust, unreasonable or unduly prejudicial, as alleged in the complaint, or that the present rates, initiated by the Director General, are unlawful.

The percentage relationship of the lower class rates to the first-class rate in the Denver-Utah common-point scale is:

Classes .....	1	2	3	4	5	A	B	C	D	E
Percentages.....	100	85	74.7	62.3	51.6	51.6	40.3	36.4	24.7	20.5

Under the scale approved in *Class and Commodity Rates to Salt Lake City, Utah*, 32 I. C. C., 551, from the Missouri River to Utah the relationship is as follows:

Classes .....	1	2	3	4	5	A	B	C	D	E
Percentages .....	100	85	75	63	50	52.5	40	35	25	21

It will be observed that the Denver-Utah scale was on substantially the same percentage relationship as the scale approved in the above-cited case from the Missouri River to Utah. Very different relationships are maintained, however, under the scales in effect from Denver to points on the Union Pacific intermediate to Ogden. This is illustrated in the following table:

52 I. C. C.

*Rates and percentage relations of lower class rates to first-class rates from Denver to the stations designated.*

	Classes.									
	1	2	3	4	5	A	B	C	D	E
<b>Cheyenne:</b>										
Class rates.....	45	40	35	30	27	27	21	17	13	11.75
Relationship of classes.....	100	88.9	77.8	66.7	60	60	46.7	37.8	28.9	26.1
<b>Hermosa:</b>										
Class rates.....	62	53	47	36	32	32	27	21	18	15
Relationship of classes.....	100	85.5	75.8	58	51.6	51.6	43.5	33.9	29	24.2
<b>Hanna:</b>										
Class rates.....	90	75	67	57	52	53	44	37	28	21
Relationship of classes.....	100	83.3	74.4	63.3	57.8	58.9	48.9	41.1	31.1	23.3
<b>Walcott:</b>										
Class rates.....	96	81	75	63	57	59	45	40	28	22
Relationship of classes.....	100	84.4	78.1	65.6	59.4	61.5	46.9	41.7	29.2	22.9
<b>Granger:</b>										
Class rates.....	130	111	98	82	65	68	52	46	33	27
Relationship of classes.....	100	85.4	75.4	63.1	50	52.3	40	35.4	25.4	20.8
<b>Evanston:</b>										
Class rates.....	140	117	105	88	70	74	56	49	35	29
Relationship of classes.....	100	83.6	75	62.9	50	52.9	40	35	25	20.7
<b>Ogden:</b>										
Class rates.....	154	131	115	96	79.5	79.5	62	56	38	31.5
Relationship of classes.....	100	85	74.7	62.3	51.6	51.6	40.3	36.4	24.7	20.5

In the interest of uniformity the class rates, except first class, to these intermediate points on the Union Pacific should be revised to place them upon the same relationships to first class as are observed under the Denver-Utah common-point scale. The record affords no grounds for a finding that they are unreasonable or unduly prejudicial, and in the absence of any such showing we do not require this suggested realignment.

It was testified that the rates from Denver to Spokane were the same as the rates from Denver to Reno and Phoenix, following the rate parity prescribed by us with respect to rates from eastern defined territories to those points. In *City of Spokane v. N. P. Ry. Co.*, 19 I. C. C., 162, we prescribed class rates from the Missouri River and points east thereof to Spokane; in *Railroad Commission of Nevada v. S. P. Co.*, *supra*, and in *Maricopa County Commercial Club v. S. F., P. & P. Ry. Co.*, *supra*, we prescribed the same rates to Reno and Phoenix, respectively. It was stated at the hearing that in view of these decisions the carriers deemed it proper to establish rates from Denver to Spokane on the basis prescribed from Denver to Reno. It is to be observed, however, that the rates to Spokane were on a scale 30 cents higher than the Reno rates. It will also be observed that the rates to Pendleton, Oreg., 1,146 miles from Denver and intermediate to Spokane via the route of the Union Pacific system and from Denver to Huntington, Oreg., a distance of 972 miles, were likewise higher than the Denver-Reno rates.

The rates from Denver to Spokane are on a scale of 20 cents, first class, under the rates to Pacific coast points, although the distances  
52 I. C. C.

are practically the same. By comparison with those rates the Denver-Spokane rates do not appear to be out of line, and we do not find them to be unreasonable or otherwise unlawful. Nor would we be justified upon this record in condemning the rates to Huntington, Pendleton, and other points on the lines of the Oregon-Washington Railroad & Navigation Company and Oregon Short Line mentioned in the complaint.

(2) *Stations on the Southern Pacific.*—The class rates from Denver to Cobre, Winnemucca, and Reno were prescribed in *Railroad Commission of Nevada v. S. P. Co., supra*, and complainants have presented nothing upon this record to convince us that they, or the present rates based thereon, were or are unreasonable or unduly prejudicial.

The rates from Denver to San Francisco and other Pacific coast terminals were made by adding to the rates to Reno or Phoenix the following differentials:

Classes -----	1	2	3	4	5	A	B	C	D	E
Differentials -----	50	43	36	27	28	28	20	13	14	7.5

The local first-class rate from Reno to San Francisco was 97 cents. The distance is 243 miles. The first-class rate from Phoenix to Los Angeles, a distance of 451 miles, was \$1.65. The differential scale is substantially lower than the local scale and its use in determining the rates to the Pacific coast did not, in our opinion, result in making the latter unreasonably high.

The record before us is not convincing that the class rates under consideration from Denver to stations on the Southern Pacific were, or are, unjust, unreasonable, or unduly prejudicial. Although the relationships do not correspond with those prescribed by us in recent cases they are substantially the same as have been observed by the carriers throughout this western territory.

(3) *Stations on the San Pedro, Los Angeles & Salt Lake Railroad, Las Vegas & Tonopah Railroad, Bullfrog Goldfield Railroad, Tonopah & Goldfield Railroad, Nevada Northern Railway, Bingham & Garfield Railway, Great Northern Railroad, and Butte, Anaconda & Pacific Railway.*—The line of the San Pedro, Los Angeles & Salt Lake Railroad, now known as the Los Angeles & Salt Lake Railroad and hereinafter referred to as the Salt Lake route, extends from Salt Lake City to Los Angeles, a distance of 784 miles. The Bullfrog Goldfield Railroad extends from Beatty, Nev., which is 118 miles from Las Vegas via the Las Vegas & Tonopah Railroad, to Goldfield, Nev., 198 miles from Las Vegas. Tonopah is 28 miles beyond Goldfield on the Tonopah & Goldfield Railroad.

Although the Salt Lake route was made a defendant in this proceeding no representative appeared at the hearing and no evidence

was offered with respect to its rates. It is a matter of common knowledge that this carrier operates through a barren country where local traffic is exceedingly light. We do not find upon this record that the class rates maintained from Denver to stations on its line are unreasonable or otherwise in violation of any of the provisions of the act.

Class rates from various points in the United States, including Denver, to stations on the Bullfrog Goldfield, Tonopah & Goldfield, and Nevada Northern railways were considered by us in the *Goldfield Cases*, 34 I. C. C., 360. Upon the record there made we found that conditions affecting the transportation of traffic over those lines fully justified the maintenance of the rates under attack and dismissed the complaints. Nothing appears upon this record to warrant a different conclusion at this time. The record likewise affords no basis for a reduction in class rates to points on the Biggum & Garfield, Great Northern, and Butte, Anaconda & Pacific. The Las Vegas & Tonopah Railroad is no longer in operation.

#### G. OUTBOUND COMMODITY RATES FROM DENVER AND POINTS TAKING THE SAME RATES.

Complainants seek to have established some 59 less-than-carload commodity rates and 14 carload commodity rates from Denver and points taking the same rates to points in Arizona, Idaho, Montana, New Mexico, Oregon, Texas, Utah, and Wyoming. The articles specified move on commodity rates from Chicago and complainants arrive at the figures of their proposed rates by applying to the rates from Chicago the percentages which the distances from Denver bear to those from Chicago, adding 5 cents per 100 pounds for terminal charges as heretofore explained in connection with their proposed class rates to western destinations.

A commodity rate applicable to less-than-carload traffic is a pronounced departure from the usual practice and we should require its establishment only upon a clear showing of compelling reasons. We have stated that we could not approve the proposed method for the construction of class rates from Denver and apart from what we have just said there are stronger reasons for rejecting it when applied to commodity rates. Such rates are usually made to fit the special circumstances affecting the articles to be transported. Volume of movement is an element to be considered, and when, as here, the rates desired are predicated on the rates in effect from another point of origin the relative volume of movement from both points should be made known. The record contains no such information, nor is there any evidence regarding the necessity for the establishment of com-



modity rates on the articles specified. We are therefore precluded from fixing outbound commodity rates from Denver as prayed for in the complaint.

#### GENERAL.

That complaint, one in form, is in substance a bundle of complaints, each assailing a different rate situation affecting Denver but all bound around a central idea which gives them collectively a semblance of unity. In the successive chapters of this report we have dealt with these several complaints and expressed such conclusions as are supported by the record. That record, voluminous as it is, has itself been built up around the same central idea, and is largely devoted to an exposition of the percentage system of rate making as exemplified in scales in central freight association territory based on the New York-Chicago scale, and the advantages to Colorado which would result from such a system if applied to traffic to and from Colorado.

The central idea is a theory which has as its foundation the extension of a system of rate construction applying in the most densely populated portion of the United States, where the volume of traffic is enormous, to other sections where conditions are substantially different. This theory of complainants underlies practically their entire case, even as to the intermountain territory west of the Colorado common-point line. While they do not there apply the percentage theory directly, nevertheless they seek to justify their proposed rates by comparisons with the proposed Chicago-Colorado scale, which is itself constructed upon that theory. There is relatively little real consideration of the reasonableness *per se* of these proposed rates, or of their effect upon the revenues of the carriers. Communities can not long prosper on rates which impair the ability of carriers to properly serve them, and carriers can not long prosper on rates which shackle the energies of the communities served. The adjustment must be reasonable and fair to both, and made to meet the traffic and transportation conditions which both encounter. Of transportation difficulties west of Denver we said in *Class and Commodity Rates, supra*, at page 555:

The haul to Colorado common points is a prairie haul; the farther haul to Utah common points is a mountain haul. On the line of the Union Pacific the rise and fall west of Cheyenne, Wyo., which is in the Colorado common-point group, is over twice that east of Cheyenne, despite an expenditure during recent years of over \$10,000,000 in improvement of the line west. The other main line between Colorado and Utah common points, the Denver & Rio Grande, has also, and even more recently, expended millions in the improvement of its mountain road. On both lines the adverse mountain conditions compel higher operating expenses than on the prairie lines, because of decreased locomotive

efficiency, necessity for helper service, constructive mileage, and slower schedules resulting in higher wages to train crews, increased inspection and repair of both track and equipment, and other exceptional conditions.

Upon the whole the record lacks that development of traffic and transportation conditions in the various regions served which would best aid us in determining whether the rate structures complained of need readjustment, and what that readjustment should be. Some defects were made clearly apparent, and in so far as the record permitted we have required their correction. There may be other instances where readjustment should be made, and could be made upon proof of the pertinent facts untinged by any attempt, through constructive mileage or other fictions, to so expand eastern rate structures, operative under traffic conditions which have developed two, four, and six track systems, as to embrace the more seasonal, fluctuating, and restricted traffic which is borne by the single-track railroads serving Denver and the west.

An order will be entered to give effect to our conclusions.

**WOOLLEY, Commissioner,** concurring:

In so far as the majority report has the effect of eliminating or reducing discriminations in freight rates I concur, and it is not my intention to make any point as to the other findings where they are based on any insufficiency of the record. However, it is apparent to me that in deciding these cases great weight has been given to considerations which, in my opinion, should not be controlling at this time.

In the final paragraphs of the report it is pointed out that "The central idea (of complainants) is a theory which has as its foundation the extension of a system of rate construction applying in the most densely populated portion of the United States, where the volume of traffic is enormous, to other sections where conditions are substantially different." Complainants pray, in effect, for the extension, in a modified form, to a large section of the west, of a system of rate construction which apparently they think admirable; and while I do not intend to be understood as advocating that on the theory advanced or the evidence presented by complainants we should, or could, make an order changing substantially the structure of the rates complained of, I want to place myself on record as not disagreeing with the statement that "Communities can not long prosper on rates which impair the ability of carriers to properly serve them, and carriers can not long prosper on rates which shackle the energies of the communities served," but as going much further and stating unequivocally my belief that a large percentage of our communities can never prosper in the measure their location entitles

them to until the preferences inherent in a rate structure lacking in substantial uniformity are removed and rates are made with a view to the equality of opportunity so prominently in the minds of the framers of our constitution.

We are now in a position to handle rate matters in a broader and more constructive way than ever before, for the current rates were initiated by the Director General of Railroads, and the federal control act directs us in determining any question concerning rates so initiated to "give due consideration to the fact that the transportation systems are being operated under a unified and coordinated national control and not in competition." In the final paragraph of the report reference is made to complainants' attempt "to so expand eastern rate structures, operative under traffic conditions which have developed two, four, and six track systems, as to embrace the more seasonal, fluctuating, and restricted traffic which is borne by the single-track railroads serving Denver and the west." Without attempting to forecast the possibilities of development in sections now served only by single-track systems, I wish to emphasize my belief that one of the greatest obstacles to be overcome in the development of such sections and, incidentally, of two, four, and six track systems therein, is the inequalities resulting from our present structure of freight rates, and that under the law now in force we should dispose of complaints on broader grounds than those stated in the majority report, with a view to the inauguration of a rate adjustment as nearly free from discriminations and inequalities as may be possible.

COMMISSIONER EASTMAN did not participate in the disposition of this case.

52 I. C. C.

No. 9985.

HENRY KING &amp; COMPANY

v.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY  
ET AL.

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*Submitted November 14, 1918. Decided March 7, 1919.*

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Reparation awarded on shipments of citrus fruits from points in Florida to points in Tennessee.

*William A. Wimbish* for complainant.

*Charles D. Drayton* for defendant carriers.

*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

In its complaint seasonably filed on December 1, 1917, the complainant, a corporation doing a wholesale grocery business at Murfreesboro, Tullahoma, and McMinnville, Tenn., seeks reparation on 18 carloads of citrus fruits shipped to it from points in Florida to those points in Tennessee between October 10, 1915, and December 14, 1916, alleging that the rates charged by the defendant carriers were unreasonable, unduly prejudicial, and in certain instances in violation of the long-and-short-haul rule of the fourth section. By supplemental complaint filed after the hearing the Director General of Railroads was made a party defendant. He answered, but no further hearing was asked or had. Except as otherwise indicated, the rates are stated in cents per standard box or crate of the estimated weight of 80 pounds and are those in effect prior to June 25, 1918.

The shipments moved over various routes to Chattanooga, Tenn., thence by way of the Nashville, Chattanooga & St. Louis Railway to the destinations. The rates applied were as follows: To Murfreesboro, Tenn., 77.8 cents from Thonotosassa and Ona, Fla., and 76.8 cents from Tampa, Fla., composed of joint commodity rates of 61 cents from Thonotosassa and Ona and 60 cents from Tampa to Nashville, Tenn., and 80 per cent of the local second-class rate of 21 cents, or 16.8 cents, from Nashville to destination; to Tullahoma, Tenn., 82.6 cents from Thonotosassa and Ona, composed of a commodity rate of 61 cents to Huntsville, Ala., and 80 per cent of the

second-class rate of 27 cents, or 21.6 cents, from Huntsville to destination; to McMinnville, Tenn., 90 cents from Thonotosassa and Ona and 89 cents from Seffner, Fla., composed of commodity rates of 54 cents from the first two points and 53 cents from Seffner to Chattanooga, and 80 per cent of the second-class rate of 45 cents, or 36 cents, beyond. The indicated percentages represent the application of rates per 100 pounds to the 80-pound crates. The rates to Murfreesboro and Tullahoma were apparently applied under authority of rule 5(b) of Tariff Circular 18-A. Murfreesboro and Tullahoma are directly intermediate to Nashville and the rates to those points represented a departure from the long-and-short-haul rule of section 4, protected by general applications.

In an agency tariff containing rates on citrus fruits from points in Florida to points throughout the United States and Canada, filed to become effective July 15, 1916, the defendant carriers, as part of a general realignment of such rates to points in southeastern territory conformably to the principles announced in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153; 32 I. C. C., 61, proposed to establish the following joint commodity rates on citrus fruits, in carloads: To Murfreesboro, 61 cents from Thonotosassa and Ona and 60 cents from Tampa; to Tullahoma, 61 cents from Thonotosassa and Ona; and to McMinnville, 64 cents from Thonotosassa and Ona and 63 cents from Seffner. No change was proposed in the rates to Chattanooga, Nashville, and Huntsville. These schedules were suspended in *Fruits from Florida*, 43 I. C. C., 595, in which we considered the proposal of the carriers to realign their carload and less-than-carload proportional rates on citrus fruits from Jacksonville, Fla., to points on and east of the Mississippi River and on and south of the Ohio River, excluding points in the Carolinas, applicable on shipments originating in Florida south of Jacksonville. Both increases and reductions were proposed, and, instead of constructing rates on the basing-point system, it was proposed to establish a full line of rates to the intermediate as well as to the base points. We found the proposed revision justified, our order suspending the schedules referred to was vacated May 12, 1917, and the proposed joint commodity rates from and to the points concerned herein became effective on that date and remained in force until June 25, 1918, when they were increased under General Order No. 28 of the Director General of Railroads. As the present rates to Murfreesboro and Tullahoma are the same as the rates to Nashville the departures from the provisions of section 4 no longer exist.

The complainant contends that the rates applied were intrinsically unreasonable and that it is entitled to reparation. It compares the

52 I. C. C.

rates to Murfreesboro with the rates to Nashville, 32 miles farther distant; the rate to Tullahoma with the rate to Huntsville, approximately 35.5 miles more distant; and the rates to McMinnville with the rates to Nashville and Huntsville, approximately 35 and 1.5 miles, respectively, farther distant, and with the rate to Chattanooga, 116 miles less distant, contending that 36 cents was an excessive addition to the Chattanooga rate for the additional distance. There is no proof of violation of section 3, as alleged.

The Nashville, Chattanooga & St. Louis Railway apparently is willing to make the desired reparation, but the other defendant carriers are not. No evidence was introduced by them, but it was stated on their behalf that complainant seeks reparation upon a voluntary readjustment of rates made in order to eliminate or realign fourth section departures, and that this is not a proper basis for an award.

If the rates filed to become effective on July 15, 1916, had not been suspended they would have applied on 10 of the 18 shipments. While as a general rule awards of reparation will not be made where the rates affected have been the subject of a general readjustment, this does not apply where the rates charged exceed those found reasonable by such substantial amounts as to be intrinsically unreasonable under any adjustment.

We find that the rates charged were unreasonable to the extent that they exceeded those subsequently established in accordance with our report in *Fruits from Florida, supra*. We further find that complainant made the shipments and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendant companies for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

52 I. C. C.

No. 9970.

PHILIP CAREY COMPANY

v.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY  
ET AL.

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Submitted December 4, 1918. Decided March 21, 1919.

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Rates on expansion paving joints, in carloads, from Lockland, Ohio, to various Pacific coast destinations found to have been unreasonable. Reparation awarded.

*F. C. Bowman* for complainant.

*George O. Somers* for transcontinental lines.

*O. S. Lewis* for Baltimore & Ohio Railroad Company.

*R. Walton Moore* for Director General of Railroads.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

By DIVISION 3:

Complainant is a corporation engaged in the manufacture of prepared roofing, expansion paving joints, etc., at Lockland, Ohio. By complaint seasonably filed it alleges that the charges collected by the defendant carriers on 23 carloads of expansion paving joints and on mixed carloads of expansion paving joints and prepared roofing, shipped between May 12, 1915, and October 21, 1916, inclusive, from Lockland to Everett and Tacoma, Wash., and San Francisco, Los Angeles, and San Bernardino, Cal., were unreasonable to the extent that they exceeded the charges that would have accrued on the basis of the rates and minimum weight contemporaneously maintained on prepared roofing, in carloads, from and to the same points. Reparation is asked. By supplemental complaint filed after the hearing the Director General of Railroads was made a party defendant. No further hearing was asked or had. Rates are stated in amounts per 100 pounds.

Charges were collected on the carload shipments of expansion paving joints at fifth-class rates of \$1.80, minimum 36,000 pounds, legally applicable. No evidence was submitted to show which, if any, of the shipments consisted of mixed carload lots, or the charges col-

52 I. C. C.

lected thereon. During the period covered by the complaint commodity rates of 80 cents, minimum 40,000 pounds, applied on prepared roofing from Lockland to Everett, Tacoma, and San Francisco, and to Los Angeles until July 15, 1915, on which date a rate of 85 cents, subsequently reduced to 84 cents and then to 83 cents, became effective; while to San Bernardino for the same period a rate of 97 cents was applicable. On December 30, 1916, the rate to the terminals was increased to 90 cents, to Los Angeles to 93 cents, and to San Bernardino to \$1.05. On March 15, 1918, following *Trans-continental Commodity Rates*, 48 I. C. C., 79, a rate of \$1 was established to all the points named. Since November 10, 1916, the same commodity rates and minima applicable to prepared roofing have applied on expansion paving joints in straight or mixed carloads with prepared roofing, so that complainant's only interest in this case is with respect to reparation.

Expansion paving joints are made by pressing layers of asphalt between two sheets of asphalt-saturated paper. They vary in thickness and are from 3 to 36 inches in width, while the standard length of each section is 5 feet. They are placed between the paving and curb in the construction of concrete and other forms of sidewalk, and are also used in masonry construction, to provide for the expansion of the materials. Asphalt constitutes 97 per cent of their weight. The process of making prepared roofing and paving joints is the same, as are the ingredients, the only difference being that the joints contain a greater quantity of asphalt. There is no competition between them. During the period of movement expansion joints and roofing paper were rated the same in the western classification.

A witness for the defendant carriers made general statements to the effect that the rates on roofing paper were compelled by water competition, but he knew of no shipments which moved by water.

In their answers the Southern Pacific Company, Morgan's Louisiana & Texas Railroad & Steamship Company, Texas & New Orleans Railroad Company, and Union Pacific Railroad Company admit that the rates charged were unreasonable to the extent that they exceeded those contemporaneously in effect on roofing paper.

We find that the rates assailed were unreasonable to the extent that they exceeded those contemporaneously applicable on prepared roofing, in carloads, from Lockland to said destinations, respectively. We further find that complainant made shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation



due can not be determined on this record and the complainant should prepare a statement in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

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No. 9500.

W. T. FERGUSON LUMBER COMPANY

v.

LOUISIANA & ARKANSAS RAILWAY COMPANY ET AL

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*Submitted January 17, 1919. Decided March 21, 1919.*

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Carload of lumber from Spring Hill, La., to Johnstown, Pa., found to have been misrouted. Reparation awarded.

*Robert A. Thomann* for complainants.

No appearance for defendants.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

#### By DIVISION 3:

Complainants are William Buchanan and W. T. Ferguson, co-partners, engaged in the lumber business at St. Louis, Mo., under the name of W. T. Ferguson Lumber Company. By complaint seasonably filed they allege that the rate of 36 cents per 100 pounds charged by the defendants on a carload of yellow-pine lumber shipped December 21, 1914, from Spring Hill, La., to Johnstown, Pa., was unreasonable to the extent that it exceeded 32 cents. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment, weighing 45,300 pounds, was delivered to the Louisiana & Arkansas Railway at Spring Hill, routed by complainants "V. S. & P. & A. G. S. Penn. Dely.," and moved over the line of the initial carrier to Sibley, La.; Vicksburg, Shreveport & Pacific Railway to Vicksburg, Miss.; Alabama & Vicksburg Railway to Meridian, Miss.; Alabama Great Southern Railroad to Chattanooga, Tenn.; Cincinnati, New Orleans & Texas Pacific Railway to Cincinnati, Ohio,

52 I. C. C.

and Pennsylvania system beyond. Charges were collected in the sum of \$163.08, at a joint commodity rate of 36 cents applicable over the route of movement.

Contemporaneously a joint commodity rate of 32 cents applied from and to these points by way of the Louisiana & Arkansas to Sibley; Vicksburg, Shreveport & Pacific to Vicksburg; Alabama & Vicksburg to Meridian; and Alabama Great Southern or Southern Railway to Bristol, Tenn., or Potomac Yard, Va. Routing by way of Cincinnati was inserted on the waybill at Meridian by the joint agent of the Alabama & Vicksburg and Alabama Great Southern. Had the Alabama Great Southern delivered the shipment to the Southern at Chattanooga for transportation beyond by way of Bristol or Potomac Yard, in accordance with the routing above set forth, which was consistent with the routing instructions in the bill of lading, the 32-cent rate would have applied.

We find that the Alabama & Vicksburg Railway and the Alabama Great Southern Railroad misrouted the shipment; that complainants made the shipment as described and paid and bore the charges thereon and were damaged by the misrouting to the extent of the difference between the charges paid and those that would have accrued had the shipment been forwarded by way of the route over which the 32-cent rate applied; and that they are entitled to reparation from the Alabama & Vicksburg Railway and the Alabama Great Southern Railroad in the sum of \$18.12, with interest.

An appropriate order will be entered.

52 I. C. C.

No. 10009.

NEW ORLEANS JOINT TRAFFIC BUREAU ET AL.

v.

KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted November 16, 1918. Decided March 21, 1919.*

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Rates on lumber and articles taking the same rates and on box lumber or shooks, heading, hoops, and staves, in carloads, from New Orleans, La., to certain Texas destinations found to have been and to be unreasonable. Reparation awarded.

*L. M. Nicholson and Carl Giessow* for complainants.

*Denegre, Leovy & Chaffe, Baker, Botts, Parker & Garwood, Fred H. Wood, and C. W. Owen* for defendant carriers.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

This complaint, filed December 27, 1917, alleges that the defendants' carload rates on box lumber or shooks, hereinafter referred to as box shooks, heading, hoops, staves, and lumber and articles taking the same rates, from New Orleans, La., to certain points in Texas are unreasonable, unduly prejudicial, and in violation of the fourth section in that they exceed the aggregate of the intermediate rates to and from Harvey, La. Complainant S. T. Alcus & Company, Limited, a corporation engaged in the manufacture of box shooks at New Orleans, asks for reparation on all shipments of box shooks made by it from New Orleans to Port Arthur, Tex., during the statutory period. By supplemental complaint filed after the hearing, the Director General of Railroads was made a party defendant, and the complainants consented to the increase as provided in General Order No. 28 of the rates for the future prayed in their original complaint. The Director General answered, but no further hearing was asked or had. Rates are stated in cents per 100 pounds, and are those in effect prior to June 25, 1918, on which date they were increased 25 per cent as a result of General Order No. 28 issued by the Director General of Railroads.

The destination points are on the main line of the Texas & New Orleans Railroad, hereinafter called the T. & N. O., Echo to Beaumont, Tex., inclusive, on the Port Arthur and Sabine branches of

52 L. C. C.

that road and on the main line of the Texarkana & Fort Smith Railway, hereinafter called the Fort Smith, Ruliff, Tex., to Port Arthur, inclusive. The rates attacked were 13 cents on lumber, except cypress, and articles taking the same rate, to the destinations on the T. & N. O., and 17 cents on box shooks, heading, hoops, and staves to all the destinations, except that to West Port Arthur, Round Lake, Sabine Pass, and Sabine, Tex., on the T. & N. O., the rate on box shooks was 13 cents. There were no joint rates on lumber to the destinations on the Fort Smith. The rates attacked, with the exception of those on box shooks to stations on the Fort Smith, Ruliff to Chaison, Tex., inclusive, and Port Neches, Tex., exceeded the aggregates of the intermediate rates based on Harvey, a point adjacent to New Orleans on the opposite side of the Mississippi River. From New Orleans to Harvey there was in effect a transfer charge of 1 cent per 100 pounds, minimum \$6 per car, maximum \$7.50 per car, applicable on all interstate freight, with certain exceptions not material here. From Harvey there was in effect a rate of 9 cents on lumber and box shooks to the destinations on the T. & N. O., and a rate of 11.5 cents on heading, hoops, and staves to all the destinations and on box shooks to the destinations on the Fort Smith except Ruliff to Chaison, inclusive, and Port Neches. The fourth section departures were protected by applications which were considered in *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153. In that proceeding we found that sufficient justification had not been shown for continuing through rates on traffic from interstate points to points in Louisiana and Texas that exceeded the aggregates of the intermediate rates and denied fourth section relief, but the effective date of our order therein has been postponed pending determination of *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C., 105.

The complainants show that, based on an average loading of 64,300 pounds, the rates assailed from New Orleans to Port Arthur, approximately 300 miles, yielded 27.86 cents per car-mile on lumber and 36.43 cents per car-mile on box shooks, heading, hoops, and staves.

For the defendants it was testified that the rate on lumber from Harvey was made with relation to rates established by the Railroad Commission of Texas from Texas milling points, and insisted that it is too low. It was stated that a proposed revision of the Harvey rates has been held in abeyance pending determination of *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, *supra*. But it is conceded that the Harvey rates are voluntary rates and have been in effect for 10 years or longer. It was also contended for the defendants that the

52 I. C. C.

charge for transfer from New Orleans to Harvey is too low considering the service performed. We have consistently held that a through rate in excess of the aggregate of the intermediate rates is unreasonable.

We find that the rates assailed were and that the present rates are, and for the future will be, unreasonable to the extent that they exceeded or may exceed the aggregate of the intermediate rates contemporaneously in effect to and from Harvey; that during the statutory period complainant S. T. Alcus & Company made shipments of box lumber or box shooks from New Orleans to Port Arthur over defendants' lines upon which it paid and bore the charges; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and the complainant named should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

52 I. C. C.

No. 10044.  
NASHVILLE ROLLER MILLS  
v.  
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY  
COMPANY ET AL.

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*Submitted December 9, 1918. Decided March 21, 1919.*

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Rates applicable on flour in carloads from Portland, Corvallis, and Silverton, Oreg., to Nashville, Tenn., determined. Complaint dismissed.

*T. M. Henderson* for complainant.

*Wm. Burger* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

In this complaint, seasonably filed, as amended, reparation is sought on 11 carloads of flour shipped from Portland, Corvallis, and Silverton, Oreg., to Nashville, Tenn., between August 14, 1916, and March 26, 1917, it being alleged that the rates charged were unreasonable and illegal. Rates are stated in cents per 100 pounds, and are those in effect during the period of movement.

The sole question presented is one of tariff interpretation. Complainant testified that four of the shipments originated at Portland, three at Corvallis, and four at Silverton; and that charges were collected on three shipments each from Corvallis and Portland at a rate of 75 cents, and on the four shipments from Silverton and one from Portland at a rate of 73 cents. The 75 and 73 cent rates from Corvallis and Silverton were combination rates composed of 10 and 8 cents, respectively, to Portland, 55 cents thence to Memphis, Tenn., and 10 cents beyond. No authority appears for the rates alleged to have been charged on the shipments from Portland, the only explanation made for the defendants being that those shipments must have originated either at Corvallis or Silverton. The applicable rate from Portland to Nashville was 65 cents, composed of 55 cents to Memphis and 10 cents beyond. If the shipments originated at Portland, they were overcharged accordingly. No one was present at the hearing who knew the complete routing on all of the shipments, although it

appears that from Corvallis and Silverton the Southern Pacific was the initial carrier. It was agreed by the parties that the only issue which we can determine is the legality of the combination rates of 75 and 73 cents from Corvallis and Silverton, respectively, over defendants' lines with the Southern Pacific as initial carrier.

There is no question as to the legality of the 10-cent component from Memphis to Nashville, but it is contended that the 55-cent rate which was applied as the component from Portland to Memphis was applicable over defendants' lines from Corvallis and Silverton to Memphis. Countiss' tariff I. C. C. No. 1023, in effect up to March 10, 1917, named a rate of 55 cents on flour, in carloads, from "points shown on pages 1 to 70, inclusive, as taking \* \* \* 'intermediate' rates to Memphis, Tenn." Both Corvallis and Silverton were so included as points on the Southern Pacific taking intermediate commodity rates. The item carrying the 55-cent rate to Memphis was governed by a note reading, "Rates will not apply via gateways operating in connection with the Southern Pacific Co."

Complainant contends that this note applied only where the Southern Pacific participated in the traffic as an intermediate carrier and not where the traffic originated on its line. Silverton is a local point on the Southern Pacific, but from Corvallis there was a route open by which the Southern Pacific could have participated as an intermediate carrier.

The defendants construed this note as meaning that the rates would not apply in connection with the Southern Pacific, and when it was learned that efforts were being made to construe the note so as to authorize the 55-cent rate from Corvallis and Silverton the carriers amended the note, effective March 10, 1917, to read, "Rates will not apply in connection with the Southern Pacific Co." It is our view that the note had reference to gateways where the Southern Pacific delivered traffic to its connections as well as those where traffic was received by the Southern Pacific, and that it therefore applied to traffic in which the Southern Pacific participated either as initial or intermediate line.

Upon a careful examination of the tariffs in question and upon the facts of record we find that the legally applicable rates from Corvallis and Silverton with the Southern Pacific as initial carrier were 75 and 73 cents per 100 pounds, respectively.

An order dismissing the complaint will be entered.

52 I. C. C.

No. 10182.  
TWEED LUMBER COMPANY  
v.  
SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted December 2, 1918. Decided March 21, 1919.*

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Rates applicable on lumber in carloads from Westville, S. C., to Bath Beach, N. Y., not shown to have been unreasonable or unduly prejudicial. Three shipments found to have been overcharged and reparation awarded.

*Geo. G. Tweed* for complainants.

*H. M. Cobb* for Southern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

By DIVISION 3:

Complainants are S. F. Tweed and G. G. Tweed, copartners, engaged in the wholesale lumber business at Sumter, S. C., under the name of Tweed Lumber Company. By complaint filed May 8, 1918, as amended, they seek reparation on five carloads of lumbe. shipped in September, October, and November, 1916, from Westville, S. C., to Bath Beach, N. Y., alleging that the rates charged thereon were unreasonable and unduly prejudicial. Rates are stated in cents per 100 pounds.

The shipments moved over the defendants' lines by way of Pinners Point, Va. On three of the cars, two of which were shipped October 30, and one November 11, 1916, charges were collected in the sum of \$637.71, at a rate of 29 cents and an aggregate weight of 219,900 pounds; on the remaining two cars shipped September 15 and November 25, 1916, charges were collected at a rate of 28 cents. During the entire period of movement a combination rate of 28 cents, composed of rates of 13 cents to Pinners Point and 15 cents beyond, was applicable. The three shipments on which a rate of 29 cents was assessed were overcharged \$21.99.

Complainants' sole contention is that the 28-cent rate was unreasonable in that it exceeded 26.25 cents, which would have been applicable over the route of movement had the carriers established a joint rate from and to these points on the water-competitive basis, the Southern's 13-cent local rate to Norfolk plus the northern lines' water-competitive specific of 13.25 cents beyond. No other evidence of unreasonableness or undue prejudice was adduced.

52 L. C. C.



For defendant Southern Railway Company it was stated that when the shipments moved, its eastern connections had authorized rates to Bath Beach on the water-competitive basis and that some of its competitors had provided rates on that basis, but that it was not practicable for the Southern to amend its tariffs to provide for the application of this basis to Bath Beach in time for these shipments. Also that it has since undertaken with other lines to cancel all water-competitive rates on lumber from points in the south to eastern points, but that all such rates have not yet been canceled. It is asserted for that carrier that the applicable rates were not unreasonable and that the basis sought, which is the result of water competition, is not a measure of reasonableness or the proper basis for an award of reparation.

We find that the applicable rates are not shown to have been unreasonable or unduly prejudicial, but that the charges collected on three of the shipments were illegal to the extent that they exceeded those that would have accrued at the rate of 28 cents per 100 pounds. We further find that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent that the charges paid exceeded those legally applicable; and that they are entitled to reparation in the sum of \$21.99, with interest.

An appropriate order will be entered.

52 I. C. C.

No. 10216.

PAGE &amp; HILL COMPANY

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAIL-  
WAY COMPANY ET AL.

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*Submitted November 27, 1918. Decided March 21, 1919.*

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Rate of 22 cents per 100 pounds on cedar posts, in carloads, from Spur 325, near Boy River, Minn., to Morrison, Ill., by way of Minnesota Transfer, Minn., found to have been legally applicable and not shown to have been unreasonable. Complaint dismissed.

*N. E. Boucher* for complainant.

*Albert H. Lossow* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

Reparation is sought herein on a carload of cedar posts, shipped April 14, 1917, from Spur 325, near Boy River, Minn., to Morrison, Ill., it being alleged that the charges collected thereon were unreasonable and illegal. Rates are in cents per 100 pounds.

The shipment moved, as routed by the complainant, over the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo line, to Minnesota Transfer, Minn., and the Chicago, St. Paul, Minneapolis & Omaha and the Chicago & North Western railways, the latter hereinafter called the North Western, beyond. The North Western received the shipment at Elroy, Wis. Charges were collected on the basis of rates of 8 cents to Minnesota Transfer and 13 cents beyond, a total of 21 cents. The rate to Minnesota Transfer was 9 cents, making the combination rate based on that point 22 cents. The shipment was undercharged 1 cent per 100 pounds.

At the time of movement a joint commodity rate of 20 cents applied from Spur 325 to Morrison, when a shipment was waybilled by way of Waukesha, Wis., the Soo line to the latter point and the North Western beyond forming the direct route. Complainant contends that the 20-cent rate was also applicable over the route of

52 I. C. C.

movement by virtue of the following provision of the governing tariff, to which all three lines were parties:

The routes provided in this tariff are those ordinarily and customarily used. When from any cause whatsoever, shipments are sent via junction points other than those specified herein, but over the lines of carriers party to this tariff, the rates will apply with the same effect as if shipments moved via routes specified herein.

Throughout the tariff the application of the published joint rates is indicated by specification of junctions between the originating and delivering lines, and such additional junctions as are necessary where intermediate lines are used. The plain intendment is to restrict the routing to the lines to and from the junctions named. In this instance the specification of Waukesha called for Soo line movement to that junction point and the North Western beyond.

While the rule cited and relied upon by complainant covers deviations in routing "from any cause whatsoever" and is not in terms restricted to the carriers' initiative, its manifest purpose is, not to give shippers a choice of routes, but to protect the published joint rates whenever the carriers find it expedient or necessary to resort to other routes in order to move traffic. Complainant's routing instructions, which were followed, deprived the Soo line and the North Western of their hauls to and from Waukesha, required the intervention of a third line with the additional transfer service, and added 43 miles to the haul.

Upon the facts disclosed we find that the combination rate of 22 cents per 100 pounds was legally applicable to the shipment in question and that this rate is not shown to have been unreasonable. An order dismissing the complaint will be entered.

52 I. C. C.

No. 8365.

COFFEYVILLE MERCANTILE COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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Submitted October 23, 1918. Decided March 21, 1919.

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Following *Coffeyville Mercantile Co. v. A., T. & S. F. Ry. Co.*, 33 I. C. C., 122, 34 I. C. C., 231, claim for reparation on shipments from St. Louis, Mo., and other points to Coffeyville and Independence, Kans., denied. Complaint and supplemental complaint dismissed.

*E. H. Hogueland* for complainants.

*Robert Dunlap, T. J. Norton, J. B. Coffey, and F. E. Andrews* for Atchison, Topeka & Santa Fe Railway Company; *F. G. Wright* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway; and *C. S. Burg and J. W. Allen* for Missouri, Kansas & Texas Railway Company.

*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3.

This case presents a claim for reparation growing out of our decision in *Coffeyville Mercantile Co. v. M., K. & T. Ry. Co.*, 33 I. C. C., 122, 34 I. C. C., 231. In that case, decided January 30, 1915, upon a complaint filed November 10, 1913, as amended January 16, 1914, by three of the five complainants herein, we found that the defendants' rates on classes and certain commodities from St. Louis, Mo., and other points to Coffeyville and Independence, Kans., were unreasonable and unjustly discriminatory to the extent that they exceeded the rates then in effect to Chanute and Parsons, Kans., by more than certain prescribed differentials, and reasonable maximum rates were prescribed. Following the principles announced in *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry.*, 20 I. C. C., 43, reparation was denied. On April 18, 1916, the complainants filed a petition for rehearing to enable them to submit evidence on the question of reparation on all shipments which moved within two years prior to the filing of the complaint, averring in their petition that the facts and conditions set forth at the time of the hearing, March 16, 1914,

were not peculiar to the time the amended complaint was filed, namely, January 16, 1914, or when the case was decided, January 30, 1915, and that there had been no substantial change during the two years immediately preceding the filing of the amended complaint. The petition was denied.

The complainants in this case by their complaint filed October 1, 1915, ask reparation on shipments which moved from and to points named in the case cited between the date of the hearing therein, March 16, 1914, and the date our order became effective, July 10, 1915. By supplemental complaint filed after the hearing the Director General of Railroads was made a party defendant. He answered, but no further hearing was asked or had.

Complainants' witnesses testified that there were no changes in transportation or commercial conditions between the date of the hearing of the original case and the effective date of our order therein. No evidence was offered for the defendants.

The issue here presented was before us in the case cited, and the facts now relied upon to secure a reversal of our action therein are substantially the same as those presented in the petition for rehearing. Following our decision in that case and upon the present record the complaint and supplemental complaint will be dismissed.

EASTMAN, *Commissioner*, dissents.

52 I. C. C.

No. 10000.

SAVAGE TIRE COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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Submitted October 29, 1918. Decided March 28, 1919.

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Rates on flat wire braid, in carloads and less than carloads, from Niles, Mich., to San Diego, Cal., and on less than carloads of the same commodity from Weehawken, N. J., to San Diego found to have been and to be unreasonable to the extent that they exceeded or may exceed the contemporaneously applicable fourth-class rate, carloads, and the first-class rate, less than carloads, from Niles to San Diego, and the first-class rate, less than carloads, from Weehawken to San Diego. Measure of reasonable maximum rates prescribed and reparation awarded.

*O. T. Helping* and *P. H. Campbell* for complainant.

*E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company.

*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## By DIVISION 3:

The complainant, a corporation engaged in the manufacture of rubber tires at San Diego, Cal., alleges, by complaint filed October 22, 1917, that the rates charged by the defendant carriers on certain carload and less-than-carload shipments of "wire" from Niles, Mich., and Weehawken, N. J., to San Diego, which moved within two years prior to the filing of the complaint, were unreasonable and unduly prejudicial. Reparation and the establishment of reasonable rates are asked. By supplemental complaint filed after the hearing the Director General of Railroads was made a party defendant, and the complainant consented to the increase as provided in General Order No. 28 of the rates for the future prayed in its original complaint. The Director General answered, but no further hearing was asked or had. Rates are stated in amounts per 100 pounds.

The shipments consisted of light-weight, flat, steel wire braid three-eighths inch in width made up of 21 strands of small wire. The braid is used in the manufacture of automobile tires and was shipped in reels of about 1,000 feet weighing about 400 pounds. Specific reference was made to five carload and eight less-than-carload shipments.

52 I. C. C.

Charges were collected on two of the carload and five of the less-than-carload shipments from Niles at the double first-class rate of \$7, and on two less-than-carload shipments and on the three remaining carload shipments from the same point at the first-class rate of \$3.50 and the fourth-class rate of \$2.15, respectively; and on a less-than-carload shipment from Weehawken at the double first-class rate of \$7.40. Prior to September 1, 1916, the following ratings were applicable on carload and less-than-carload shipments: Double first class on wire work, not otherwise indexed by name, in packages or loose, and first class on wire goods, not otherwise indexed by name, flat or nested, in barrels or boxes. On and after that date both wire goods and wire work, in carloads or less than carloads, not otherwise indexed by name, flat, folded flat or nested, in bundles, were rated double first class, and in barrels, boxes, or crates, first class. The carload shipments on which the fourth-class rate was charged moved after January 25, 1917. On that date ratings of first class were established on "wire braid, iron or steel, on reels," in less than carloads, and fourth class, minimum 36,000 pounds, in carloads. These ratings are still in effect.

The complainant contends that the rates on wire rope or cable were legally applicable to its shipments. Between July 15, 1915, and December 30, 1916, a carload rate of 75 cents, minimum 50,000 pounds, applied from and to the points in question on iron, steel, or copper wire, rope, or cable, not insulated. On the last-named date this rate was increased to 85 cents, minimum 50,000 pounds, and on March 15, 1918, to 95 cents, same minimum, from Niles and \$1.10, same minimum, from Weehawken. A fourth-class rate of \$2.15 applied during the period of movement on wire rope, iron or steel, in less than carloads, from Niles to San Diego and \$2.25 from Weehawken to the same destination.

The complainant introduced photographs of what appears to be a flat copper rope or cable, three-eighths of an inch in width, made up of braids of 180 fine copper wires of 36 strands of five wires each; also of a flat copper wire rope or cable, about one-fourth of an inch wide, made up of braids of 100 fine copper wires of 20 strands of five wires each. These articles are said to be regularly shipped by a certain manufacturer at the commodity rate on copper cable. A catalogue of another wire manufacturer describes a certain series of twisted wires bound together by soft Swedish iron or steel wire as "flat rope." The smallest size listed in the catalogue is one-fourth of an inch thick and one and one-half inches wide. It is notable that the consignor of most of the shipments advertised itself, among other things, as a manufacturer of "wire braids."

We find that the shipments consisted of wire braid and could not properly have been described as wire rope or cable; that the rating legally applicable on that commodity, in carloads or in less than carloads, prior to January 25, 1917, was double first class, and that the shipments moving prior to January 25, 1917, on which less than the double first-class rate was charged, were undercharged. The legal rates were applied on the subsequent shipments.

The complainant further contends that it was unreasonable to charge higher rates on wire braid than on wire rope and cable. It was testified on its behalf that wire braid may be loaded as heavily as iron, steel, or copper wire or cable; that it is not any more susceptible to damage; that the fact that it is braided is no basis for the higher rate inasmuch as identical commodity rates apply on copper wire, copper rope, and copper cable, and that it is not as valuable as certain kinds of cable which take lower rates. The rate sought also applies on barb wire. But braided wire is considerably heavier than barb wire and its value was and is somewhat higher.

The double first-class rate of \$7 from Niles to San Diego, about 2,400 miles, yielded 58.3 mills per ton-mile and, based on 40,000 pounds, the average weight of the shipments, \$2,800 per car, and about \$1.17 per car-mile. The fourth-class rate of \$2.15 from Niles to San Diego yielded \$860 per car of 40,000 pounds, about 35.8 cents per car-mile, and 17.9 mills per ton-mile; the commodity rate of 75 cents on iron, steel, or copper wire rope or cable from and to the last-named points yields \$375 per car of 50,000 pounds, about 15.6 cents per car-mile, and 6.25 mills per ton-mile, while the 85-cent rate subsequently established on the last-named commodities yielded \$425 per car of 50,000 pounds, about 17.7 cents per car-mile and 7.03 mills per ton-mile.

When the shipments moved commodity rates were also maintained from and to the points in question on iron or steel wire cloth or netting, n. o. s., less than carload, ranging from \$1.50 to \$1.75. The rate on braided wire was and is the same as applied on manufactured wire articles, n. o. i. b. n., and the complainant contends that if wire cloth or netting was and is entitled to low commodity rates, braided wire of the character shipped should not take a higher rate; also that if defendants should increase the rate on cable to fourth-class the same as now applies on braided wire in carloads, there would be no objection to the application of the fourth-class rate on braided wire, but that so long as the defendants apply a lower commodity rate on cable, braided wire should take the same rate.

For the defendants it was stated that the articles cited by way of comparison move in large volume; that the comparatively small movement of wire braid did not justify the application of a com-



modity rate thereon; and that the commodity rates cited on wire rope and cable were depressed by actual water competition. A witness for the defendant Atchison, Topeka & Santa Fe Railway admitted that the double first-class rates on the shipments were unreasonable.

The record fails to show any specific competition with manufacturers who use wire rope, wire cable, or any of the articles cited in comparison, and no substantial evidence was introduced to support the contention of undue prejudice.

We find that the rates legally applicable were and that the present rates are, and for the future will be, unreasonable to the extent that they exceeded or may exceed the contemporaneously applicable fourth-class rate, carloads, and the first-class rate, less than carloads, from Niles to San Diego, and the first-class rate, less than carloads, from Weehawken to San Diego. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

52 I. C. C.

No. 10111.  
**WAUKESHA LIME & STONE COMPANY**  
*v.*  
**CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.**

*Submitted September 14, 1918. Decided March 28, 1919.*

Defendant's increased charge for switching interstate shipments in Waukesha, Wis., found justified. Complaint dismissed.

*H. N. McEwen* for complainant.

*J. N. Davis* and *O. W. Dynes* for defendant.

**REPORT OF THE COMMISSION.**

**DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.**

**BY DIVISION 3:**

It is alleged herein that the defendant's charge of 1 per cent per 100 pounds, minimum 60,000 pounds, for switching interstate shipments of stone, fuel wood, and other commodities between complainant's plant and defendant's connection with the Chicago & North Western Railway, hereinafter called the North Western, at Waukesha, Wis., a distance of 3.09 miles, is unreasonable, and the establishment of a reasonable charge is asked. The Director General of Railroads is not a party defendant.

The complainant's shipments, the majority of which are interstate, consist mostly of crushed and pulverized stone and lime, and average from 8 to 10 cars per day. Prior to August 1, 1915, there was no direct connection at Waukesha between the tracks of the defendant and the North Western, and shipments from and to complainant's plant and other plants local to the defendant's line were switched to and from the North Western in connection with the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo line. The charge for this service on stone and fuel wood was \$4 per car, made up of the defendant's charge of \$2 for switching to its connection with the Soo line and a \$2 charge of the latter for switching to its connection with the North Western. On other commodities the defendant's charge was \$4 per car, making a total of \$6. On August 1, 1915, at which time direct connection between the defendant's line and the North Western at Waukesha was effected, the intermediate service of the Soo line was discontinued, and the en-

52 L. C. Q.

tire switching has since been performed by the defendant. From August 1, 1915, to September 15, 1916, the charge for this service was \$2 per car on shipments of stone and fuel wood and \$4 per car on other commodities, regardless of weight, and applied on both interstate and intrastate movements. On the latter date the defendant established a charge of 1 cent per 100 pounds, minimum 60,000 pounds, for switching interstate shipments of all commodities to or from its connection with the North Western. This charge and the charge of \$4 per car for the like switching of intrastate shipments, performed in connection with a road-haul movement, are still in effect. These charges cover movement of a car loaded one way and empty the other and are the same as those now in effect for switching at Waukesha from the defendant's tracks to industries on the North Western. The North Western absorbs all the switching charges on shipments of lime and fuel wood on which it receives a revenue of \$19, formerly \$15, or more per car, but none on stone.

In justification of the increased charge it was testified for the defendant that in the past many switching charges, including those at Waukesha, were reciprocal and made without regard to cost; that investigations have shown that such services in many instances were performed at less than actual cost, especially during the past few years, due to increased operating expenses; and that the \$4 charge on intrastate traffic was fixed by the Railroad Commission of Wisconsin. It is urged that a charge upon a weight basis is more equitable than a flat charge of so much per car, and that it is the present tendency to establish switching charges upon that basis. It was pointed out that we prescribed, in *Jefferson Milling Co. v. B. & O. R. R. Co.*, 31 I. C. C., 547, a charge of 2 cents per 100 pounds, minimum \$3 per car, for switching carload shipments of flour at Charlestown, W. Va., a distance of about five-sixths of a mile, and in *Wolf Milling Co. v. B. & O. R. R. Co.*, 49 I. C. C., 678, a charge of 2 cents per 100 pounds, minimum \$5 per car, for switching a distance of approximately a quarter of a mile at Keyser, W. Va.; also that in *Switching Charges at Milwaukee, Wis.*, 32 I. C. C., 509, a switching charge of 1 cent per 100 pounds, minimum 60,000 pounds, for an average movement of about 7 miles, was found to have been justified.

While, in response to the complainant's challenge, the defendant did not show definitely the cost of the particular service, nevertheless in the light of the circumstances and conditions disclosed and of the well-known fact of large increases in costs throughout the whole country, we are of opinion and find that the increased charge assailed has been justified. An order dismissing the complaint will be entered.

52 I. C. C.

No. 10239.  
AETNA EXPLOSIVES COMPANY  
v.  
DIRECTOR GENERAL OF RAILROADS ET AL.

*Submitted November 21, 1918. Decided March 24, 1919.*

Rate on sulphuric acid, in tank-car loads, from New Orleans, La., to Oakdale, Pa., found to have been unreasonable. Reparation awarded.

*Edward E. Miller* for complainants.

*Alex M. Bull* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

Complainants are George C. Holt and Benjamin B. Odell, as receivers of the Aetna Explosives Company, a corporation engaged in the manufacture of explosives. By complaint seasonably filed they seek reparation on three tank-car loads of sulphuric acid shipped from New Orleans, La., to Oakdale, Pa., in August and September, 1916, alleging that the rate charged by the defendant carriers was unreasonable to the extent that it exceeded \$7.30 per net ton.

The shipments aggregated 276,300 pounds, on which the total charges collected were \$1,298.61, based on the applicable fifth-class rate of 47 cents per 100 pounds. Effective March 30, 1916, the defendant carriers proposed to establish a rate of \$7.30 per net ton on sulphuric acid, in tank-car loads, from New Orleans to Oakdale. Upon protest by certain shippers against the increased rate to New York, N. Y., proposed in the same tariff, all the rates therein, including the \$7.30 rate to Oakdale, were suspended in Investigation and Suspension Docket No. 810, *Sulphuric Acid from New Orleans, La.*, 42 I. C. C., 200, and did not become effective until February 22, 1917, following our decision in that proceeding. But for this suspension the \$7.30 rate would have been in effect when the shipments in question moved. On June 25, 1918, under General Order No. 28, issued by the Director General of Railroads, this rate was increased to \$9.10 per net ton. Based on 92,100 pounds, the average weight of the three shipments, and the distance over the route of movement, 1,598 miles, the

52 I. C. C.

rate charged yielded about 27 cents per car-mile; the rate asked and subsequently established would have yielded approximately 21 cents per car-mile.

We find that the rate assailed was unreasonable to the extent that it exceeded \$7.30 per net ton; that the Aetna Explosives Company made the shipments as described and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that the complainants, George C. Holt and Benjamin B. Odell, as receivers of the Aetna Explosives Company, are entitled to reparation in the sum of \$290.11, with interest.

An appropriate order will be entered.

52 I. C. C.

No. 9828.

ALKIRE-SMITH AUTO COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted October 28, 1918. Decided February 26, 1919.*

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Charges legally applicable on self-propelling vehicles and parts thereof, in carloads, from eastern defined territories to Utah common points found to have been unreasonable. Reparation awarded.

*W. S. McCarthy, M. H. Love, and H. W. Prickett* for complainants.

*H. A. Scandrett, L. T. Wilcox, E. N. Clark, and J. G. McMurry* for defendants.

*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

The complainants are corporations, partnerships, and individuals engaged in the automobile business at Salt Lake City, Ogden, and Provo, Utah. By complaint filed August 3, 1917, they allege that the rates charged by the defendants on numerous carloads of self-propelling vehicles, including automobiles, and parts thereof, shipped from Detroit, Flint, and Lansing, Mich., Connersville, Indianapolis, and Kokomo, Ind., Cleveland, Toledo, and Wagon Works, Ohio, and Buffalo, N. Y., to Salt Lake City, Ogden, and Provo, between March 22 and October 27, 1915, were unreasonable and unduly prejudicial and that certain of the rates were and are in violation of the long-and-short-haul rule of the fourth section. Reparation and reasonable rates are asked. By supplemental complaint filed after the hearing, which reiterates the allegations and prayer of the original complaint, the Director General of Railroads was made a party defendant. He answered but asked no further hearing and none was had. Rates stated are in amounts per 100 pounds and are those in effect prior to June 25, 1918, except as otherwise noted.

Informal complaints covering certain of the earlier shipments were presented to us shortly after the movement. The complainants were promptly notified that informal adjustment was impossible.

52 I. C. C.

More than six months after the dates of these notices but within the statutory period, statements of claims, covering shipments included in the informal complaint as well as other shipments which had not been presented previously to us, were filed for the sole purpose of stopping the running of the statute. The formal complaint was filed within six months after the latter filing and included, in addition to the shipments previously mentioned, certain new shipments which moved within two years prior to the filing of the formal complaint. The claims with respect to the shipments which the complainants were advised could not be adjusted informally were not presented upon the formal docket until more than two years after the charges on them had been paid and are therefore barred.

Self-propelling vehicles, including automobiles, in carloads, are rated 110 per cent of first class in the official classification and first class in the western classification. The history of the rates from eastern defined territories to Utah common points has been detailed in numerous cases and need not be repeated. *Commercial Club, Salt Lake City v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218; 21 I. C. C. 400; *Class and Commodity Rates to Salt Lake City*, 32 I. C. C., 551; *Blackman & Griffin Co. v. A., C. & Y. Ry. Co.*, 49 I. C. C., 649, and other cases. The rates charged on many of the shipments were made by combinations on the Mississippi River crossings, using as the component west of the river the first-class rate of \$2.47. The following table of rates shows the Mississippi River combinations in effect when the shipments moved and those which became effective on September 20, 1917, as a result of an increase in the component east of the river:

To Salt Lake City <sup>1</sup> from—	Prior to Sept. 20, 1917.	Subsequent to Sept. 20, 1917.
Detroit and Lansing.....	\$3.001	\$3.17
Flint.....	3.001	3.20
Toledo and Wagon Works.....	3.001	3.13
Indianapolis.....	2.909	3.01
Kokomo.....	2.927	3.025
Connersville.....	2.944	3.04
Cleveland.....	3.078	3.19
Buffalo.....	3.122	3.325

<sup>1</sup> Minima to Mississippi River, 10,000 pounds per 36-foot car, 11,200 pounds per 40-foot car, 16,200 pounds per 50-foot car; minima beyond Mississippi River, 10,000 pounds per 36 and 40 foot cars, 12,000 pounds per 50-foot car.

These rates and minima produced the lowest charges applicable on shipments in cars of certain sizes, but it was testified for the complainants that on cars of other sizes lower charges would result from the use of rates and minima to farther distant points applicable to Utah points under an intermediate clause, the lower being made

52 I. C. C.

available under alternative provisions. The following are representative of these rates applied on certain of the shipments from Detroit, Lansing, Flint, Toledo, Wagon Works, Indianapolis, Kokomo, and Connersville:

Period.	Alternative rates to Salt Lake City.		Commodity rates to Provo, <sup>1</sup> Lago, Balfour, Winnemucca, Nev., and San Francisco, Cal.
	Class.	Commodity.	
January 30, to July 15, 1915.....	\$2.88	\$3.05	\$3.10
July 15 to September 20, 1915.....	2.80	3.05	3.10
September 20 to October 20, 1915.....	2.88	3.05	3.10
October 20, 1915.....	2.96	3.05	3.10

<sup>1</sup> Los Angeles & Salt Lake Railroad delivery.

<sup>2</sup> Minima, 10,000 pounds per 36-foot car, 11,200 pounds per 40-foot car, 14,200 pounds per 50-foot car.

<sup>3</sup> Minima, 10,000 per 36-foot car, 11,200 pounds per 40-foot car, 12,000 pounds per 50-foot car.

<sup>4</sup> Minima, 10,000 pounds per 36 and 40 foot cars, 12,000 pounds per 50-foot car.

For the complainant it was explained that the \$2.88 rate first mentioned in the table was a combination of the first-class rate of \$2.80 from the points named in the table to Buena Vista, Utah, the first station west of Salt Lake City, and the first-class rate of 8 cents back to Salt Lake City. The tariff governing provided that if the aggregate of the intermediate rates made less than the through rates provided in that tariff or as amended, such aggregate rates so made would apply. From January 30 to July 15, 1915, no provision was made for the application of combination rates based on points beyond the destination as charged, and as contemplated by rule 5 (b) of Tariff Circular 18-A, nor was there any provision for the application of the Buena Vista rates to Salt Lake City. The rates legally applicable on the shipments moving between the dates mentioned, to which the \$2.88 rate was applied, were the Mississippi River combination rates, and all such shipments were undercharged. A similar rate situation existed from Cleveland and Buffalo, from which higher rates applied to Salt Lake City than to Buena Vista. The rates from the points of origin to Balfour, a few miles west of Ogden, during the period last named, were also lower than the rates to Ogden and, while the Balfour combination was charged on the 36-foot cars, the rate legally applicable was the higher Mississippi River combination rates and such shipments were also undercharged. The higher rates to Utah common points than to the points beyond between January 30 and July 15, 1915, represented unauthorized departures from the long-and-short-haul rule of the fourth section and were unlawful.

Effective July 15, 1915, an intermediate rule was published making the rates to points beyond applicable at Utah common points



and the class rate of \$2.80 to points beyond became applicable to Salt Lake City and Ogden, removing the previously existing fourth section violations. The \$2.88 rate, established to Salt Lake City on September 20, 1915, applied to both intermediate and farther distant points, as did also the \$2.96 rate subsequently established.

The \$3.05 commodity rate to Salt Lake City above mentioned was the rate contemporaneously in effect from the same points to La Grande, Oreg., and Spokane, Wash., and applied as an alternative maximum rate to Salt Lake City, an intermediate point over certain routes. It will be noted that the minimum for a 50-foot car was 12,000 pounds under this rate, while the minimum for the same sized car under the through class rate to Utah points was 14,200 pounds and under the Mississippi River combination rates, 16,200 pounds east of the river and 12,000 pounds west. Frequently where the loading was not appreciably in excess of the lowest minimum, the \$3.05 rate on shipments in 50-foot cars at the minima governing made less charges than any of the alternative rates.

The \$3.10 commodity rate shown in the table did not apply to Salt Lake City and Ogden, although such destinations are intermediate to the other points named by way of certain routes. It should be noted that the minimum for 40-foot cars under this rate was 10,000 pounds, while at the \$3.05 rate the minimum for the same sized car was 11,200 pounds. On shipments moving after September 20, 1917, the charges at the \$3.10 rate and minimum governing 40-foot cars not loaded appreciably in excess of the minimum were lower than the charges under any of the alternative rates and minima. In such instances the charges to Salt Lake City and Ogden higher than to the points beyond violated the long-and-short-haul rule of the fourth section.

The complainants pray in their original complaint for rates of \$2.90 from Cleveland and Buffalo and \$2.80 from the remaining points of origin to Utah common points. They contend that it is unreasonable to apply on certain of their shipments a rate of \$3.05, which also applies to La Grande and Spokane, several hundred miles beyond Utah common points, and disregard the fact that the short-line distances from the principal automobile manufacturing points to La Grande and Spokane are not through the Utah common points but over the northern route. The \$3.10 rate applies to San Francisco, about 800 miles beyond Salt Lake City and Ogden, as well as to Winnemucca, Nev., about 400 miles west of the destinations in question, and, therefore, it is contended that the application of higher charges to Salt Lake City and Ogden than to the farther distant points is inconsistent and unreasonable, especially when the

52 I. C. C.

great difficulties of transportation west of the Utah common points, as shown of record, are avoided in the transportation to Salt Lake City and Ogden.

The complainants show that the first-class rate from Detroit exceeded the first-class rate from the Missouri River by 50 cents to San Francisco, 55 cents to Reno, Nev., and Spokane, and 58 cents to Winnemucca, while to Salt Lake City the excess was 96 cents; also that the first-class rate of \$3.05 from Detroit to Spokane was 15 cents over the first-class rate from Chicago to the same point; and they contend that if 15 cents were added to the rate of \$2.65 applicable from Chicago to Salt Lake City, a rate of \$2.80, which is asked from Detroit, would be obtained. They further observe that the present first-class rate from Detroit to Chicago, 272 miles, is 50.5 cents; from Ogden to Winnemucca, 364 miles, \$1.24; and from Chicago to Winnemucca, \$2.75, and urge that if \$2.75 is a proper first-class rate to apply from Chicago to Winnemucca, then the rate applicable on automobiles from Detroit to Salt Lake City should not exceed that rate, as the territory west of Salt Lake City in the route from Chicago to Winnemucca presents greater difficulties of transportation than exist between Detroit and Chicago in the route from Detroit to Salt Lake City.

Rates were cited of \$2.10 on automobiles, in carloads, from Dallas, Tex., to Salt Lake City, 1,361 miles, and \$2.80 from Topeka, Kans., to San Francisco, 1,943 miles, with graduated minima based on 10,000 pounds per 36-foot car; also rates on furniture, new, in carloads, minimum 12,000 pounds, of \$2.18 from Buffalo to Winnemucca, \$2.08 from Detroit to Winnemucca, and \$1.85 from Chicago to Salt Lake City; on musical instruments, in carloads, minimum 12,000 pounds, of \$2.30 from Buffalo and Detroit to Reno, and \$2.14 from Chicago to Salt Lake City; and on bicycles, in carloads, minimum 10,000 pounds, of \$2.88 from Buffalo and Detroit to Reno, and \$2.65 from Chicago to Salt Lake City. Generally speaking, earnings under the rates cited at the governing minima were considerably less than those yielded on the shipments in question, which averaged on the 174 carloads of automobiles received by the complainants, during the period of movement, 31.036 mills per ton-mile, 18 cents per car-mile, and \$342.50 per car, for an average haul of 1,915 miles based on an average loading of 5.8 tons.

For the defendants it was stated that special cars are required for automobile traffic; that the loading is light, with a low minimum; and that the cars cost about 15 per cent more to construct than the ordinary box car, are not as available for other traffic, are not as freely interchanged, and are used only for return loading for special commodities, often under urgent tracings for expedited movement.

There were cited on behalf of the defendants rates from Detroit and Buffalo to points in Arizona and Montana for distances similar to those here under consideration with which the rates assailed compare favorably. It is noted that these rates applied not only for the distances mentioned, but also for considerably greater distances. The defendants' witnesses stated that, if the rates to Salt Lake City were reduced to the basis asked, a reduction of from 16 to 17 cents would be required in the Denver & Rio Grande Railroad's rates to numerous intermediate points in Colorado.

The complainants further contend that the charges to Salt Lake City and Ogden are unduly prejudicial because they exceed in many instances the charges to Provo. As previously shown, the charges on shipments in 40-foot cars at the \$3.10 commodity rate applicable from Detroit and related points to Provo, Los Angeles & Salt Lake Railway delivery, are lower than those based on any of the alternative rates applicable on shipments in the same sized cars from the same points of origin to Salt Lake City and Ogden. The mere showing that, in certain instances, lower charges applied to Provo than to Salt Lake City and Ogden is not sufficient to show that the higher charges to the latter points were unduly prejudicial.

The complainants observe that between July 15 and September 20, 1915, the rate from Cleveland to Ogden was 4 cents less by way of the Union Pacific or Denver & Rio Grande, than from the same point to Salt Lake City, Oregon Short Line delivery. This resulted from the fact that the first-class rate from Cleveland to Balfour, west of Ogden, was \$2.90, while the first-class rate from Cleveland to Lago, west of Salt Lake City, was \$2.94, and these rates were applied as maxima at intermediate points, Ogden being intermediate to Balfour and Salt Lake City to Lago. The same situation existed at that time as to the rates from Buffalo.

Apparently the principal foundation for the allegation of undue prejudice is that the charges to farther distant points in some instances were lower than to Salt Lake City. It is clearly shown of record that a certain territory of distribution surrounding the Utah common points was and is exclusively assigned by each auto manufacturer to a particular dealer and that the competition between dealers in different territories is negligible if it exists at all.

In *Blackman & Griffin Co. v. A., C. & Y. Ry. Co.*, *supra*, we found that the rates on all commodities in effect between September 18 and November 15, 1914, from eastern defined territories to Utah common points were unjust, unreasonable, and unlawful to the extent that they exceeded the lowest rates contemporaneously in effect on the same commodities from the same points of origin to Winnemucca,

52 I. C. C.

or to points intermediate between the Nevada-Utah state line and Utah common points.

Following that case and upon the facts of record, we find that the charges legally applicable on the shipments in question were unreasonable to the extent that they exceeded those that would have accrued at the rates contemporaneously in effect on the same commodities from the same points of origin to Winnemucca, or to points intermediate between the Nevada-Utah state line and Utah common points. We further find that shipments were made as described; that complainants or their predecessors, except Alma Van Wagenen, paid and bore the charges thereon; that, with the exception noted, they were damaged to the extent that the charges paid exceeded those that would have accrued at the rates herein found reasonable; and that on shipments not barred by the statute of limitations the complainants are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and the complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation. No one having personal knowledge of the facts concerning a shipment on which reparation is asked by complainant Alma Van Wagenen was present at the hearing and no reparation can be awarded on that shipment.

The evidence of record is not sufficient to enable us to determine what would be reasonable rates for the future, and no finding is made on that point.

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No. 9980.

## INTERNATIONAL PAPER COMPANY

v.

## LAKE ERIE &amp; WESTERN RAILROAD COMPANY ET AL.

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*Submitted November 19, 1918. Decided March 21, 1919.*

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1. Rates on news print paper, in carloads, from Niagara Falls, N. Y., to Little Rock and Fort Smith, Ark., found to have been unreasonable over certain routes but not over the Lehigh Valley Railroad as initial carrier. Reparation awarded.
2. Increased rate, effective January 20, 1915, from Niagara Falls to Fort Smith, found to have been justified.

*D. C. Lorentz, W. J. Bohon, and H. A. Deane* for complainant.  
*O. M. Ellsworth and C. C. P. Rausch* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

The complainant, a corporation engaged in the manufacture of paper at Niagara Falls, N. Y., alleges, by complaint seasonably filed, as amended, that the rates charged on 59 carloads of news print paper shipped, between October 22, 1914, and December 7, 1915, inclusive, from Niagara Falls, 46 to Little Rock and 13 to Fort Smith, Ark., were unjust and unreasonable to the extent that they exceeded 41 and 48 cents per 100 pounds, respectively. Reparation only is asked. Rates are stated in cents per 100 pounds.

Two of the shipments to Little Rock moved from Niagara Falls to East Buffalo, N. Y., over the Lehigh Valley Railroad, not a party to the tariffs which governed the remaining shipments, and by other defendant lines beyond. Charges appear to have been collected on the basis of 48.1 cents, whereas the applicable rate was 47.4 cents, made up of 19.4 cents to East St. Louis, Ill., and 28 cents beyond. Apparently these shipments were overcharged 0.7 cent per 100 pounds. If so, such overcharges should be promptly refunded, with interest. There is no evidence that the applicable rate, in which no reduction has been made, was unreasonable.

The remaining shipments moved, as routed by complainant, initially over what is now the New York Central Railroad and thence

52 I. C. C.

by various through routes made up of defendant lines. One section of the governing tariff in effect prior to October 18, 1914, published an applicable fifth-class arbitrary of 19 cents from Niagara Falls to St. Louis, Mo., and a commodity rate of 28 cents thence to Little Rock, making a through rate of 47 cents. Another section of the tariff provided, for alternative application, in connection with a miscellaneous list of commodity rates, a through rate of 41 cents to Little Rock, based on 23 cents to Memphis, Tenn., and 18 cents beyond. The corresponding rates to Fort Smith were 54 cents, based on 19 and 35 cents to and from St. Louis, and 48 cents, based on 23 and 25 cents to and from Memphis, or 7 cents over Little Rock in either case. By express provision the above bases were made applicable over all lines parties to the tariff and all routes formed by such lines. October 18, 1914, without change in the basic rates, the use of the Memphis basis was withdrawn by a restrictive provision in that connection whereunder the constituent commodity components could no longer be used, and reversion to the higher St. Louis basis resulted. At the same time the Memphis basis, although then unavailable, was changed to provide specifically that the rate to Fort Smith should be made by use of a 7-cent arbitrary over Little Rock. January 18, 1915, the rates to Little Rock and Fort Smith, based on St. Louis, were increased 1.1 cents each. January 29, 1915, by appropriate amendment, the Memphis basis was restored, but simultaneously the arbitrary, Fort Smith over Little Rock, was increased to 8.1 cents, the increase predicated on approximately 5 per cent of the rate of 23 cents to Memphis, and making the through rate 49.1 cents. The additional 1.1 cents accrued to the eastern lines.

Except in connection with the Lehigh Valley, therefore, the rates applicable via all junctions and gateways were, prior to October 18, 1914, 41 cents to Little Rock and 48 cents to Fort Smith; from that date to January 17, 1915, inclusive, 47 cents to Little Rock and 54 cents to Fort Smith; from January 18 to 28, 1915, inclusive, 48.1 cents to Little Rock and 55.1 cents to Fort Smith; and from January 29, 1915, to April 25, 1916, inclusive, 41 cents to Little Rock and 49.1 cents to Fort Smith. With some fluctuations in the meantime, the rates were increased, June 25, 1918, under General Order No. 28 of the Director General of Railroads, to 51.5 and 61.5 cents, respectively. Some of the shipments appear to have been undercharged and others overcharged.

For the defendants it was stated that the withdrawal of the Memphis basis was inadvertent, and no attempt was made to justify the increased rates, with the exception of the 49.1-cent rate to Fort Smith. In justification of the latter rate it is testified that the increased differential has not elsewhere been questioned, that it is ap-

plied from all territories east of the Mississippi River and on all articles rated fifth class in the western classification, and that the Fort Smith rate is much under the Memphis combination as compared with Little Rock. It is observed on their behalf that the increased rate resulting from the use of the increased differential is within the permission accorded in *The Five Per Cent Case*, 32 I. C. C., 325, 331, as follows:

Joint rates between official classification territory on the one hand, and southeastern territory, the southwest, and points on or east of the Missouri River on the other, may be increased not to exceed 5 per cent of the division of the rate accruing to the carriers in official classification territory.

This justification is offered notwithstanding our findings in *Globe Soap Co. v. A. & S. Ry. Co.*, 40 I. C. C., 121; 45 I. C. C., 25, with the explanation that the added 1.1 cents in the differential represents the increase demanded by the lines east of the Mississippi River. The adverse finding in the case cited was based on undue prejudice, which does not arise here, and because the increase in that case was not justified in other respects.

Upon all the facts of record we are of opinion and find that the rates legally applicable, except that in connection with the Lehigh Valley Railroad, were, from October 18, 1914, to January 28, 1915, inclusive, unreasonable to the extent that they exceeded 41 cents per 100 pounds to Little Rock and 48 cents per 100 pounds to Fort Smith, but that the 49.1-cent rate to Fort Smith, effective January 29, 1915, has been justified. We further find that the complainant made shipments as described and paid and bore the charges thereon; that it was damaged in the difference between the charges paid and those that would have accrued on the bases herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, including the dates on which the charges were paid, as well as overcharges and undercharges, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

52 I. C. C.

No. 10165.

DIXIE PORTLAND CEMENT COMPANY

v.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY  
ET AL.PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 458,  
488, 542, AND 601.*Submitted December 14, 1918. Decided March 21, 1919.*

1. Rate on portland cement, in carloads, from Richard City, Tenn., to Jennings, La., found to have been and to be unreasonable. Measure of maximum reasonable rate prescribed and reparation awarded.
2. Fourth section relief denied.

*John S. Fletcher* for complainant.*C. B. Northrop* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

The complainant, a corporation engaged in the manufacture of cement at Richard City, Tenn., alleges by complaint, seasonably filed, that the rate of 30 cents per 100 pounds charged by the defendant carriers on three carloads of portland cement shipped in April, 1916, from Richard City to Jennings, La., was illegal and unreasonable. Reparation is asked. Prior to the hearing a supplemental complaint was filed making the Director General of Railroads a party defendant. Rates are stated in cents per 100 pounds.

Jennings is a local station on the Louisiana Western Railroad. The shipments, aggregating 197,220 pounds, moved over the lines of the defendant carriers. Charges were collected in the sum of \$591.66 at a combination rate of 30 cents, composed of a commodity rate of 10 cents to New Orleans, La., and the class C rate of 20 cents, governed by the western classification, beyond. On February 18, 1914, a joint rate of 27 cents was established on this traffic from Richard City to Louisiana points in the so-called Crowley-Opelousas-Cheneyville group, including Jennings. By supplement effective January 20, 1916, this rate was limited to certain named stations on the Louisiana Western, not including Jennings. The index to the supplement did not show Jennings

52 I. C. C.



and complainant contends that on account of this omission the 27-cent rate was not legally canceled and should have been applied on these shipments. The item contained in the supplement specifically referred to the item which named the 27-cent rate in the original tariff and properly canceled it, thereby making applicable to these shipments the combination rate charged. On June 25, 1918, the 27-cent rate was increased to 29 cents under General Order No. 28, issued by the Director General of Railroads.

On behalf of the defendants it was stated that the 27-cent rate was canceled in error and a willingness was expressed to make refund on these shipments on basis of the rate contemporaneously in effect to points in the Crowley-Opelousas-Cheneyville group.

We find that the rate assailed was, and that the present rate is, and for the future will be, unreasonable to the extent that they exceeded or may exceed the rate contemporaneously applicable on like traffic from Richard City to points in the Crowley-Opelousas-Cheneyville group. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation in the sum of \$59.16, with interest.

When the shipments moved the defendant carriers maintained a rate of 24 cents on this traffic from Richard City to Lake Charles, La., to which Jennings is intermediate. This departure from the provisions of the fourth section was protected by appropriate applications which were heard with this case. No evidence was introduced in support thereof and the applications will therefore be denied.

Appropriate orders will be entered.

52 I. C. C.

No. 10258.  
ANSON G. BETTS  
v.  
DIRECTOR GENERAL OF RAILROADS ET AL.

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*Submitted December 9, 1918. Decided March 24, 1919.*

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**Rate on iron ore, in carloads, from Barkwood, Ga., to Middlesborough, Ky., found to have been and to be unreasonable. Measure of reasonable maximum rate prescribed and reparation awarded.**

*George L. Forester* for complainant.

*William Burger* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

Complainant is engaged in mining ore at Asheville, N. C., under the name of Anson G. Betts & Company. By complaint filed September 9, 1918, he alleges that the rate charged on a carload of iron ore, shipped July 3, 1917, from Barkwood, Ga., to Middlesborough, Ky., was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul rule of the fourth section of the act. He asks for reparation and an order requiring the observance of the provisions of the fourth section.

The shipment moved over the Louisville & Nashville Railroad, approximately 270 miles. It weighed 67,600 pounds, and charges were collected in the sum of \$135.20 at the class N rate of 20 cents per 100 pounds, legally applicable, plus \$2 demurrage which is not in issue. Contemporaneously commodity rates of \$1 per long ton applied to Middlesborough from White Path and Ellijay, Ga., 6 and 10 miles, respectively, south of Barkwood and to which Barkwood is directly intermediate over the route of movement, also from Blue Ridge, Ga., a point 3 miles north of Barkwood. The departure from the long-and-short haul rule of the fourth section was and is protected by an appropriate fourth section application not heard with the case.

The defendants' witness testified that no commodity rate was in effect from Barkwood to Middlesborough when the shipment moved because the Louisville & Nashville had never been advised of any

prospective movement. No evidence was offered in justification of the fourth section departure, and it was stated for the defendants that they did not oppose an award of reparation and that the rates were in process of adjustment with a view to the establishment of a commodity rate on this traffic from Barkwood to Middlesborough no higher than from the other points mentioned. The rates charged yielded 14.8 mills per ton-mile and 50.1 cents per car-mile.

On September 25, 1917, the rates from Blue Ridge, White Path, and Ellijay were increased to \$1.05 per net ton. On June 25, 1918, they were further increased to \$1.40 per net ton, the present rates, under General Order No. 28, issued by the Director General of Rail-Barkwood to Middlesborough, was increased 30 cents per net ton, the equivalent of 1.5 cents per 100 pounds.

We find that the rate charged was, and that the present rate is, and for the future will be, unreasonable to the extent that they respectively exceeded or may exceed the rates contemporaneously in effect on like traffic from White Path and Ellijay to Middlesborough; that complainant made the shipment as described and paid and bore the charges thereon; that he was damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that he is entitled to reparation in the sum of \$105.02, with interest.

An appropriate order will be entered.

52 I. C. C.

No. 9900.

## SAN ANTONIO FREIGHT BUREAU

v.

## INTERNATIONAL &amp; GREAT NORTHERN RAILWAY COMPANY ET AL.

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*Submitted January 7, 1919. Decided March 21, 1919.*

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Rate on iron and iron articles, in carloads, from Laredo to San Antonio, Tex., originating at Monterey, Mexico, not shown to be unreasonable or unjustly discriminatory. Complaint and supplemental complaint dismissed.

*U. S. Pawkett* for complainant.

*L. M. Hogsett, W. E. Briggs, C. M. Fish, and R. C. Fulbright* for defendant carriers and interveners.

*J. L. McDonald* for San Antonio, Uvalde & Gulf Railroad Company.

*R. Walton Moore* for Director General of Railroads.

## REPORT OF THE COMMISSION.

## DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

In this complaint filed September 1, 1917, it is alleged that the rate of 31 cents per 100 pounds, minimum 30,000 pounds, maintained by the defendants from Laredo to San Antonio, Tex., on structural iron and iron articles, in carloads, originating at Monterey, Mexico, is unreasonable and unjustly discriminatory, and the establishment of a rate not in excess of 22 cents, minimum 36,000 pounds, is asked. The Galveston, Harrisburg & San Antonio and the St. Louis, Brownsville & Mexico railways intervened in defense of the rate assailed. By supplemental complaint filed on September 23, 1918, after the hearing the Director General of Railroads was made a party defendant, and the complainant consented to the increase as provided in General Order No. 28 of the rate for the future prayed in its original complaint. The Director General answered, but no further hearing was asked or had. Rates are stated in cents per 100 pounds and are those in effect at the time of the hearing except as otherwise noted.

The direct and rate-making route from Laredo to San Antonio is via the International & Great Northern Railway, 153.3 miles. By way of the Texas-Mexican Railway to Corpus Christi, Tex., and the San Antonio, Uvalde & Gulf Railroad beyond, the distance is 310 miles. Both of these lines are defendants. From Laredo to Devine, Tex.,

over the International & Great Northern, approximately 121 miles, the haul is in what is known as differential territory. The rate assailed was composed of 23 cents, equal to 60 per cent of the fifth-class rate of 38 cents, applicable for distances of 175 and over 150 miles, plus the fifth-class differential of 8 cents applicable for a haul of 130 and over 120 miles in differential territory. This basis was authorized in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83. In that case we prescribed a distance scale of class and commodity rates applicable on traffic between Shreveport, La., and Texas interstate common-point territory and a higher basis from and to points west of that territory in what is known as Texas differential territory. The defendant carriers established these scales of rates for hauls within Texas on this traffic from Mexico. The 22-cent rate asked by complainant is substantially the same as that prescribed for 153 miles in common-point territory.

In the rehearing of *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, decided January 22, 1918, subsequent to the submission of the present case, we adhered to our original finding that the rates for hauls in differential territory should be higher than in common-point territory, but modified our original findings as to the class-rate scale and the rates on certain commodities, including iron and steel articles. We reduced the fifth-class rate for distances 160 miles and over 150 for single-line application from 38 to 33 cents; and provided that the rates on iron and steel articles to and from points in differential territory might exceed the rates prescribed in interstate common-point territory by 60 per cent of the fifth-class differentials prescribed for hauls in differential territory instead of the full fifth-class differential, as originally prescribed. Following that decision the rate on iron and steel articles from Laredo to San Antonio was reduced to 24.6 cents, or 2.6 cents in excess of the rate asked. On June 25, 1918, this rate was increased 25 per cent pursuant to General Order No. 28 issued by the Director General of Railroads.

The per-car and per-car-mile yield under the rates assailed and sought from and to the points involved are compared by complainant with the earnings under numerous other rates on the same commodities, of which the following are representative:

To San Antonio from—	Distance.	Rate.	Earnings. <sup>1</sup>	
			Per car.	Per car-mile.
	Miles.	Cents.		Cents.
Laredo, Tex.....	153	23	\$111.60	72.9
Do.....	153	22	79.20	51.8
Pittsburgh, Pa.....	1,521	80.1	268.36	19
Birmingham, Ala.....	867	60	216	24.9

<sup>1</sup> Based on minimum weight of 36,000 pounds.

<sup>2</sup> Rate in effect when complaint was filed.

<sup>3</sup> Rate proposed by complainant.

As the transportation conditions affecting the rates cited are quite dissimilar from those attending the rate assailed, the comparisons are of little value. There is no evidence in support of the allegation of unjust discrimination.

Upon the facts of record we find that the basis of rates prescribed on this traffic in the rehearing of *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, *supra*, and subsequently established between the points involved was reasonable. As this basis is still in effect save for the 25 per cent increase effective June 25, 1918, the complaint and supplemental complaint will be dismissed.

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No. 10207.

GAMBLE-ROBINSON COMPANY

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY  
COMPANY ET AL.

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*Submitted November 27, 1918. Decided March 21, 1919.*

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Charges on a carload of potatoes from Duluth to Minneapolis, Minn., re-shipped to Centralia, Ill., not shown to have been unreasonable. Complaint dismissed.

*L. A. Knudsen* for complainant.

*Albert H. Lossow* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

In this complaint, seasonably filed, reparation is sought on a carload of potatoes, shipped February 7, 1917, from Duluth to Minneapolis, Minn., and reconsigned to Centralia, Ill., it being alleged that unreasonable charges were collected thereon. Rates are stated in cents per 100 pounds.

The shipment, weighing 36,000 pounds, moved over the Northern Pacific Railway to Minneapolis, where it was inspected and re-shipped on new billing over the Chicago, St. Paul, Minneapolis & Omaha and the Chicago & North Western railways to Chicago, Ill., and the Illinois Central Railroad to Centralia, 821 miles. Charges were collected in the sum of \$126.68, at the applicable combination

52 I. C. C.

commodity rate of 33.8 cents, composed of 11.8 cents to Minneapolis and 22 cents beyond, plus a car-rental charge of \$5. The latter charge is not assailed.

The defendants contemporaneously maintained a joint commodity rate of 27 cents on this traffic from Duluth to Centralia. This rate was restricted to apply by way of St. Paul, Minn., over which route the distance is 801 miles.

Complainant contends that the rate over the route of movement should not have exceeded that by way of St. Paul. The rate assailed yielded 8.23 mills per ton-mile and, based on the weight of the shipment, 14.8 cents per car-mile.

We have repeatedly held that the fact that a rate between two points is higher over one route than over another does not prove that the higher rate is unreasonable. Complainant could have used the route by way of St. Paul and thereby avoided the alleged damage, but it chose the higher-rated route through Minneapolis because of alleged inconvenience in inspecting shipments at St. Paul. The record does not disclose why the 27-cent rate was restricted to apply through St. Paul only.

We find that the charges assailed are not shown to have been unreasonable and an order dismissing the complaint will be entered.

52 I. C. C.

No. 9838.  
STANDARD OIL COMPANY (CALIFORNIA)  
v.  
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted February 26, 1918. Decided March 21, 1919.*

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Original findings with respect to legally applicable rates on liquid petrolatum, in carloads, from Richmond, Cal., to certain destinations modified and adjustment of charges directed on basis herein set forth.

*W. B. Roberts* for complainant.

*G. H. Baker* for Atchison, Topeka & Santa Fe Railway Company; *Elmer Westlake* for Southern Pacific Company; and *Robert W. Fyfe* and *H. C. Bush* for all defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

The complaint in this case attacked the rate on refined petroleum oil, known as liquid petrolatum, in carloads, from Richmond, Calif., to Portland, Oreg., and various points in defined territories and asked for reparation or relief from the payment of additional charges on 30 carloads moving between September 25, 1915, and August 29, 1916. In the original report, 51 I. C. C., 598, we said:

In our opinion this oil was included within the classification description of "patent or proprietary medicines," to which the second-class rating was applicable. During the period of movement a commodity rate of \$1.50 applied on drugs, medicines, and chemicals from the California terminals, including Oakland and San Francisco, Cal., to the destinations in question, except Portland, and it is our opinion that the article shipped was within the description in connection with that rate. The tariffs naming rates from Richmond provided for the alternative application of the "back-haul" combination if it made a lower charge than the joint rate. Prior to August 15, 1916, the Atchison, Topeka & Santa Fe Railway published a second-class rate of 5 cents from Richmond to San Francisco and the Southern Pacific Company a second-class rate of 6 cents from Richmond to Oakland. On the date mentioned these rates were superseded by a second-class arbitrary of 5 cents from Richmond to the California terminals over either road. In every instance, except in connection with the shipment to Portland, the back-haul combination was lower than the second-class joint rate.

52 I. C. C.



We find that the second-class rate of 47 cents per 100 pounds was legally applicable on the shipments to Portland, and that on the remainder the following combination rates were legally applicable: \$1.55 per 100 pounds on the shipments that moved over the Atchison, Topeka & Santa Fe and \$1.55 and \$1.56 per 100 pounds, respectively, on the shipments that moved over the Southern Pacific prior and subsequent to August 15, 1916. The charges should be adjusted on these bases.

A further investigation of the tariffs shows that prior to August 15, 1916, there were published by both the Atchison, Topeka & Santa Fe and the Southern Pacific local commodity rates of 2.5 cents applicable on freight of all kinds, when not otherwise specified, carloads, minimum 30,000 pounds from Richmond to Oakland. On the date mentioned it was provided that in constructing the back-haul combinations the second-class arbitrary of 5 cents from Richmond to California terminals, referred to in the original report, should be used to the exclusion of the local rates. The tariffs also provided for the alternative application of the combination of intermediate rates by way of the route of movement if it made a lower charge on any shipment, so that on shipments moving from Richmond to Oakland and thence east by a route other than through Richmond the local rate to Oakland would have continued to apply after August 15, 1916. The record does not establish that any of the shipments in question were actually back hauled from Richmond.

We find that the second-class rate of 47 cents per 100 pounds was legally applicable on the shipments to Portland, and that on such of the other shipments as moved east from Richmond the following combinations were legally applicable: \$1.525 per 100 pounds prior to August 15, 1916, and \$1.55 per 100 pounds thereafter. The charges should be adjusted in accordance with these revised findings.

52 I. C. C.

No. 9946.  
W. D. HAAS & COMPANY  
v.  
TEXAS & PACIFIC RAILWAY COMPANY ET AL.

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*Submitted October 25, 1918. Decided March 24, 1919.*

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Rates on cotton from points in Louisiana on defendants' Eunice branch to New Orleans, La., for export or interstate movement, not found unreasonable or unduly prejudicial. Complaint and supplemental complaint dismissed.

*W. D. Coleman* for complainants.

*Vic Schaffenburg* for defendant carriers.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

In their complaint filed October 30, 1917, the complainants alleged that the rates on cotton from points on the defendants' Eunice branch in Louisiana to New Orleans, La., for export or interstate movement, were unreasonable and unduly prejudicial to complainants to the undue preference of buyers and shippers at Opelousas, La., and that they were not the rates approved and found reasonable in *Louisiana Cotton*, 46 I. C. C., 451. The establishment of reasonable and nonprejudicial rates is asked. By supplemental complaint filed on September 24, 1918, after the hearing the Director General of Railroads was made a party defendant, and the complainants consented to the increases as provided in General Order No. 28 of the rates for the future prayed in their original complaint. The answer thereto of the Director General of Railroads denies that complainants are entitled to relief and prays that the original complaint and supplemental complaint be dismissed. No further hearing was asked or had. Unless otherwise specified, the points named are in Louisiana and the rates stated are in amounts per 100 pounds, and are those in effect prior to June 25, 1918, on which date they were increased 15 cents per 100 pounds under said General Order No. 28.

The Eunice branch extends from a junction with defendants' main line at Bunkie southward to Eunice, a distance of approximately 37 miles. Cotton is shipped from all stations on this branch, but Ville  
52 I. C. C.

Platte and Chataignier are the principal shipping points. There is a round-bale press at Eunice, but the nearest compress for ordinary bales of cotton from these points is at Bunkie. Opelousas is a compress point on the defendants' Opelousas branch, extending from the junction with the main line at Melville, which is 34 miles southeast of Bunkie, in a southwesterly direction to Crowley. It is also on the main line of the New Orleans, Texas & Mexico Railway and on a branch line of Morgan's Louisiana & Texas Railroad.

The Eunice branch, the main line of the New Orleans, Texas & Mexico, and a branch line of Morgan's Louisiana & Texas Railroad, extending through Eola and Opelousas, form a rough triangle with its apices at Opelousas, Eunice, and Eola, the last-named point being 4 miles southwest of Bunkie. In this territory there is a heavy production of cotton, for which the complainants and other buyers on the Eunice branch are in active competition with buyers at Opelousas. The cotton is hauled by wagon into either Opelousas or points on the Eunice branch. At Opelousas it is compressed at the expense of the shipper and moves out under the rates on compressed cotton, while from Eunice branch points it moves in uncompressed form to Bunkie, where it is compressed and reshipped to New Orleans, at the rates applicable to cotton to be compressed in transit by and at the expense of the carrier. While the defendant carriers published rates from Opelousas to New Orleans on cotton to be compressed in transit by and at the expense of the carrier, there was no movement thereunder.

The defendant carriers published rates to New Orleans for "depot delivery" and "ship-side delivery." The movement over their line from points in Louisiana is entirely within that state, but the depot-delivery rates applied also as proportional rates in constructing through rates to points beyond New Orleans to which no joint rates applied. The ship-side-delivery rates, which were 3 cents per 100 pounds higher than the rates for local delivery, applied to New Orleans, Algiers, Gretna, Port Chalmette, Stuyvesant docks, and Westwego, on traffic for export or coastwise movement. The rates on cotton to be compressed by the carrier in transit and on cotton to go through uncompressed were 10 and 20 cents, respectively, higher than on compressed cotton. The charge to the shipper or carrier for compression was 10 cents per 100 pounds, or 50 cents per bale of 500 pounds. In the *Louisiana Cotton Case* we found that the rates proposed on cotton to go through uncompressed, 20 cents higher than the rates on compressed cotton, were reasonable and proper.

Prior to September 1, 1917, the defendant carriers maintained the following rates, in amounts per bale of 535 pounds, excess in proportion, to New Orleans, those under column A applying on cotton

with carrier's privilege of compression in transit, under column B on compressed cotton, and under column C on uncompressed cotton. These and other rates to New Orleans, hereinafter referred to, were depot-delivery rates, which were in each instance 3 cents less than the ship-side-delivery rates. Where no rates are shown there were no through rates:

From—	A.	B.	C.
Ville Platte.....	\$1.75		
Chataignier.....	1.75		
Eunice.....	2.00		
Bunkie.....	1.75	\$1.25	\$1.75
Opelousas.....		1.00	1.75

By tariffs filed to become effective on various dates between November 1, 1916, and March 30, 1917, the carriers in Louisiana proposed to make certain increases in the rates and charges, and changes in the regulations and practices affecting the interstate transportation of cotton and cotton linters from points in Louisiana to Galveston and Port Arthur, Tex., and to New Orleans and points on and east of the Mississippi River. The operation of these tariffs was suspended and the propriety of the proposed increased rates and changed regulations and practices considered in the *Louisiana Cotton Case*.

Our finding in the *Louisiana Cotton Case* with reference to the proposed general readjustment of rates follows:

Upon consideration of the whole record we are of opinion and find that the adjustment of rates proposed is reasonable and proper, but that because of the many errors, inaccuracies, and omissions the schedules under suspension should be canceled. The respondents may establish on not less than five days' notice rates from points in Louisiana to the interstate destinations here considered, and to New Orleans, interstate or for export, upon bases not higher than those herein found reasonable, and with such modifications of their regulations and practices as we have indicated.

In discussing the Opelousas rate situation we stated, with respect to the proposed rate of 30 cents on compressed cotton to New Orleans, that this adjustment seemed to be satisfactory to protestants at Alexandria, and found that the rates then proposed would be reasonable and proper. Following that decision the defendant carriers canceled the tariff containing the proposed rates above named, and, effective September 1, 1917, established the following rates to New Orleans:

From—	A.	B.	C.
Eunice branch points.....	45	( <sup>1</sup> )	55
Bunkie.....	40	30	50
Opelousas.....	40	30	50

<sup>1</sup> From Eunice, in cylindrical bales only, 30 cents; from other points on that branch no rate was established.

The complainants take the position that in the *Louisiana Cotton Case* we found justified a rate of 40 cents from Eunice branch points to New Orleans, on cotton compressed in transit, and therefore that rates in excess thereof were in contravention of our findings; that the rates assailed were intrinsically unreasonable, and were unjustly discriminatory in favor of Opelousas to the extent of 5 cents per 100 pounds, which discrimination, they allege, previously existed but was ordered removed in the *Louisiana Cotton Case*; that a rate from Eunice branch points on cotton compressed in transit 10 cents over the compressed-cotton rate from Opelousas would place the branch-line points on an equality with Opelousas; and that unless the rates are so equalized cotton from the producing territory above referred to will be attracted to Opelousas. The position so taken is erroneous. As between Eunice branch points and Opelousas the adjustment approved contemplated a spread of 5 cents over Opelousas.

Prior to June 25, 1918, the defendants' rates on cotton compressed in transit, together with the distances, from various points and branches on their line in Louisiana to New Orleans were as follows:

From—	Distance. <sup>1</sup>	Rates.
	<i>Miles.</i>	<i>Cents.</i>
Eunice branch.....	180	45
Opelousas.....	181.8	40
Opelousas branch:		
Second Lake to Opelousas.....	142	40
Belle Isle to Crowley.....	166	45
Melville branch.....	151.5	40
Marksville branch.....	167.8	40
Natchitoches branch:		
Breville to Lake End.....	250.7	47
Hanna to Cotton Belt Connection.....	292.4	49.5
Alexandria.....	193.9	45
Main line stations, Cypress to Knoll.....	195	45
Shreveport.....	316.7	49.5

<sup>1</sup> Where the rate applied from more than one station the distance shown is the average.

<sup>2</sup> Approximate distance.

The distances shown are exclusive of a constructive mileage of 20 miles account of Mississippi River crossing, the use of which would not affect our findings. As there is no compress on the defendants' line between Opelousas and New Orleans, an average back haul of 21.2 miles is necessary on cotton from stations on the Opelousas branch between Melville and Opelousas, which is compressed at Opelousas. A back haul is also required on cotton from points on the Melville branch compressed at either Bunkie or Opelousas.

The complainants' witness, who had first-hand knowledge of the conditions on the Marksville and Eunice branches, testified that there were no conditions justifying a lower rate from the Marksville branch than from the Eunice branch. But the complainants show the average distances to New Orleans from the Eunice branch as 174

52 I. C. C.

miles and from the Marksville branch as 173 miles, which are at variance with those shown in the defendants' distance tariff on file with us. Transportation conditions, excepting differences in distances and between branch-line and main-line stations, are similar from the stations and branches referred to above.

The complainants compared the 45-cent rate attacked with the rate of 39 cents published by the Chicago, Rock Island & Pacific Railway from Eunice to New Orleans, applicable on both interstate and intrastate traffic by way of the Rock Island to Alexandria, the compress point, thence by way of the defendants' line or the lines of either Morgan's Louisiana & Texas Railroad or Louisiana Railway & Navigation Company. They observed that by way of Alexandria and the defendants' line the distance is 235 miles over two lines, while by way of defendants' line direct the distance is only 198.8 miles. It was testified that under a rule of the Railroad Commission of Louisiana which required a carrier to meet the lowest rate between competitive points, the defendants were required to meet this rate of the Rock Island on intrastate traffic. For the defendants it was asserted that the 39-cent rate was too low and that while under the general application of the tariff it applied in connection with their line from Alexandria, they had taken steps to have the tariff amended so as to eliminate the rate via their line. By way of the New Orleans, Texas & Mexico, Morgan's Louisiana & Texas, or the defendants' line the rate on uncompressed cotton from Eunice to New Orleans was 55 cents.

From stations on the Crowley branch of the New Orleans, Texas & Mexico and from points on the main line of Morgan's Louisiana & Texas Railroad, Rayne to Roanoke, located approximately the same distances from New Orleans as are the Eunice branch points, the rate on uncompressed cotton was 55 cents. The defendants' witness testified that these other lines did not publish through rates on cotton compressed in transit because, as he understood the situation, there was but one compress for ordinary cotton bales on their lines in the interior in Louisiana, which is at Opelousas, and that they had had difficulty in getting that compress to enter into a satisfactory contract, which difficulty, it is conceded, did not exist as to the compress at Bunkie. On cotton compressed at Opelousas they applied a net rate of 14 cents to the compress and the compressed-cotton rate of 30 cents beyond, and the shipper paid the cost of compression, 10 cents, making the total expense to the shipper 54 cents. The 45-cent rate on cotton compressed in transit from Eunice branch points was from 3 to 6 cents less than the rates on like traffic from points in Texas to Galveston for similar distances.

The general adjustment of rates from points on the defendants' line to New Orleans was found justified in the *Louisiana Cotton Case*. The rates from Eunice branch points complained of were the rates proposed and found justified in that proceeding, and in our opinion they were and are not inconsistent with the general adjustment. Due to its closer proximity to New Orleans, Opelousas is entitled to a somewhat lower rate than are the Eunice branch points.

Upon the facts of record we find that the rates assailed were not unreasonable or unduly prejudicial.

An order dismissing the complaint and supplemental complaint will be entered.

52 I. C. C.

No. 9982.

E. I. DU PONT DE NEMOURS & COMPANY

v.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAIL-  
ROAD COMPANY ET AL.

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*Submitted October 24, 1918. Decided March 24, 1919.*

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Rate on cottonseed-hull shavings, in carloads, from East St. Louis, Ill., to Hopewell, Va., found to have been unreasonable prior to July 1, 1916. Reparation awarded.

*Harvey S. Farrow, J. P. Laffey, and V. S. Thomas* for complainant.

*O. S. Lewis* and *William A. Parker* for Baltimore & Ohio Southwestern Railroad Company; *C. P. Stewart* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; *N. S. Brown* for Wabash Railway Company; and *William W. Collin, jr.*, for Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company.

*R. Walton Moore* for Director General of Railroads.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

In its complaint seasonably filed the complainant, a corporation manufacturing explosives at Hopewell, Va., seeks reparation on numerous carloads of cottonseed-hull shavings, in bales, shipped from East St. Louis, Ill., to Hopewell, between November, 1915, and July, 1916, inclusive, alleging that unreasonable and unduly prejudicial charges were collected thereon. By supplemental complaint filed subsequent to the hearing the Director General of Railroads was made a party defendant. He answered, but no further hearing was asked or had. Rates are stated in cents per 100 pounds.

The shipments moved November 26, 1915–July 14, 1916, over the defendant carriers' lines by six routes, the originating carriers being the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad, Wabash Railway, Baltimore & Ohio Southwestern Railroad, Louisville & Nashville Railroad, Cleveland, Cincinnati, Chicago & St. Louis Railway or Chicago, Peoria & St. Louis Railroad, and the delivering line, the

52 L. C. C.



Norfolk & Western Railway. Charges were collected on the shipments which moved prior to July 1, 1916, at the applicable fifth-class rate of 33.9 cents, minimum 30,000 pounds, governed by the official classification, and on those which moved during July, 1916, at the applicable commodity rate of 21.5 cents, minimum 30,000 pounds.

The complainant contends that the rates charged were unreasonable to the extent that they exceeded the rate of 18.4 cents contemporaneously in effect on cottonseed hulls from East St. Louis to Hopewell, and on August 1, 1916, made applicable to cottonseed-hull shavings.

Cottonseed-hull shavings are a by-product of cotton. The locks of cotton are ginned to separate the fiber from the seed; the seeds are then reginned to remove the short fibers or linters; and the delinted seeds, to which very short fibers still adhere, are broken to separate the hulls from the kernels. The products of the kernels are cottonseed oil and cottonseed meal or cake and the products of the broken hulls are cottonseed-hull bran and cottonseed-hull shavings. The latter consist of the very short fibers which are not removed by the delinting process, together with fine particles of the hulls, and are obtained by eliminating the large, woody hull particles from the fiber-covered broken hulls through winnowing and screening processes. They somewhat resemble linters in appearance, but are of an inferior quality.

The official classification rates cottonseed-hull shavings, in machine-pressed bales, in carloads, fifth class, minimum 30,000 pounds, which rating is also applicable on cottonseed hulls, cottonseed-hull bran, and cottonseed meats (hulled cottonseed). The rating on cotton linters and on cotton n. o. s., in bales compressed to not less than 20 pounds per cubic foot, is fourth class, any quantity.

The first application of the same rates on cottonseed-hull shavings as on cottonseed hulls was in 1902, when commodity rates on that basis were established from Memphis, Tenn., to trunk line and Canadian territories. In 1908 the official classification established the same ratings on shavings as applied on hulls. In the commodity tariffs the hulls were listed with the commodities taking the rates on grain products. On various dates from June 1, 1908, to December 1, 1909, the application of the rates on cottonseed hulls or grain products to shavings was extended to apply from Cincinnati and other Ohio River crossings and from points in the Cairo-Thebes group, but not from East St. Louis, to points in central freight association and trunk line territories. In March, 1911, the hulls were taken out of the list of grain products and placed in the list of grain by-products, which consisted largely of animal foodstuffs, and the rates on the shavings followed the rates on hulls.

Prior to August 1, 1916, the rate on grain by-products, applicable on cottonseed-hull shavings to Hopewell from Cairo and Thebes, Ill., and other points within that group, was 19.1 cents, whereas the rate on shavings from East St. Louis was the fifth-class rate of 33.9 cents prior to July 1, 1916, and the grain products rate of 21.5 cents thereafter. The complainant contends that this adjustment was unduly prejudicial to East St. Louis and unduly preferential of the other points mentioned. The 19.1-cent rate from Cairo was applicable by way of East St. Louis, the routing being unrestricted. This departure from the long-and-short-haul rule of the fourth section of the act was protected by an appropriate application. On August 1, 1916, the rate from East St. Louis was reduced to the grain by-products basis of 18.4 cents, the fourth section departure and the alleged discrimination being thereby eliminated.

On March 31, 1918, the rates from all these points were increased following our supplemental order in *The Fifteen Per Cent Case*, 45 I. C. C., 303. On June 25, 1918, under General Order No. 28 issued by the Director General of Railroads, the then rate of 21.5 cents on grain by-products from East St. Louis was increased to 27 cents, "provided that in no case will the total amount of advances exceed 6 cents per 100 pounds, and provided further that in no case shall the advanced rate be less than the rates on wheat from and to the same points." The rate on wheat was 23.5 cents prior to June 25, 1918, and 29.5 cents thereafter. This conflict of rates was subsequently removed by the establishment of a specific rate of 27 cents on grain by-products. The present rates are not assailed.

At complainant's Hopewell plant the shavings are treated with caustic soda to remove the waste matter from the cellulose tissue, which is derived from the short fiber; and the cellulose is treated with nitric acid to produce nitro-cellulose, which the complainant uses principally in the manufacture of smokeless powder. Prior to the war the use of shavings was in the experimental stage and the volume of production was slight. They ranged in value from \$5 to \$15 per ton.

The war caused an increasing demand for linters for use in the manufacture of explosives and the supply became inadequate. As a result of the new use of shavings as a substitute for linters their value had increased to about \$54 per ton in December, 1915, and to about \$80 per ton in July, 1916. Their value in May, 1918, is said to have been about \$100 per ton, or from 5 to 5.1 cents per pound. The waste matter removed from the shavings by the caustic-soda process constitutes about 45 to 50 per cent, whereas the cellulose content of linters is about 95 per cent. Throughout the period of movement an any-quantity commodity rate of 30.6 cents applied on linters, also on

cotton, compressed, from and to the points in question. The complainant contends that the rates on the shavings and linters should reflect the difference between the amount of waste matter removed from each. When the movement began the value of shavings was slightly less than half the value of linters but their increased values have not always reflected the difference in the percentage of cellulose obtained. The value of the linters in May, 1918, was from 5 to 6 cents or more per pound. The value of the shavings has also been affected by the increase in the price of hulls which has ranged from about \$2.50 to \$20 per ton.

When the movement to Hopewell began the shavings were packed in plantation bales with an average lading of about 32,576 pounds per car. About January 1, 1916, the East St. Louis plant installed presses, which increased the density; and, by thus excluding the air from the interior of the bales, minimized the losses by fires originating in the process of manufacture and developing during transit. The density of the bales was increased from about 15 to 30 pounds per cubic foot and the average lading was increased to about 45,034 pounds. The volume of this movement averaged about 9,000,000 pounds per month.

The ton-mile earnings under the rate charged up to July 1, 1916, are compared below with those yielded by the rate sought and the rate in effect from Cairo, over the short, long, and average routes:

To Hopewell from—	Route.	Distance.	Rate.	Ton-mile earnings.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
East St. Louis.....	B. & O., N. & W.....	977	133.9	6.94
Do.....	do.....		18.4	3.77
Do.....	Wab., H. V., N. & W.....	1,189	133.9	5.71
Do.....	do.....		18.4	3.10
Do.....	Average of 6 routes.....	1,043	133.9	6.50
Do.....	do.....		18.4	3.53
Cairo.....	I. C. L. & N., N. & W.....	951	19.1	4.02
Do.....	M. & O., Wab., H. V., N. & W.....	1,341	19.1	2.85
Do.....	Average of 6 routes.....	1,147	19.1	3.33

<sup>1</sup> Rate charged.

<sup>2</sup> Rate sought.

The complainant also cited a carload rate of 24 cents contemporaneously in effect between the same points on wet wood pulp, which is used to a limited extent as a source of cellulose.

The defendants contend that the fifth-class rate charged was reasonable. It is admitted that the rate on shavings should not exceed the rate on linters, which, they contend, should take the same rates as cotton, it being urged that the transportation characteristics of these commodities, other than the difference in value, are practically identical. It was testified on their behalf that there was no movement of shavings from Cairo and the other crossings, except from East St. Louis, and contended that the 19.1-cent rate is not a proper measure of the reasonableness of the rate charged; and further that

there was nothing to warrant the application of rates on shavings based on the rates on grain products or grain by-products. Their witness further testified that the grain rate structure was and is low as a result of competition with the rail-lake and rail-gulf lines, and was constructed under conditions different from and unrelated to the rates on shavings; also that hull shavings were accorded this low basis of rates on the erroneous assumption that they, like the hulls, were sold as a stock food in competition with grain products or by-products. For 1,043 miles, the average distance from East St. Louis to Hopewell, a rate of 30.6 cents, the rate contemporaneously applicable on linters, would have yielded 5.87 mills per ton-mile, and, based on 45,224 pounds, the stated average lading of all of the shipments, 13.27 cents per car-mile.

The record does not establish that the complainant, who purchased the entire output of the East St. Louis plant, was damaged by reason of the alleged discrimination. Complainant failed to show that any shavings were manufactured at the other crossings or that it purchased its supply in competition with any other consumer.

A fifteenth section application filed April 13, 1918, for authority to cancel the commodity rates on shavings then in effect and to restore the class basis but not to exceed the rates on linters if lower, was heard with this case, but the application has since been withdrawn.

We find that the rate charged on the shipments which moved during July, 1916, is not shown to have been unreasonable, but that the rate charged on the shipments which moved between November 26, 1915, and July 1, 1916, was unreasonable to the extent that it exceeded 30.6 cents per 100 pounds; that the complainant paid and bore the charges on the latter shipments and was damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No. 9277.

E. I. DU PONT DE NEMOURS POWDER COMPANY  
v.  
HOUSTON & BRAZOS VALLEY RAILWAY COMPANY  
ET AL.

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PORTIONS OF FOURTH SECTION APPLICATIONS  
Nos. 488 AND 1952.

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*Submitted December 5, 1918. Decided March 3, 1919.*

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1. Rates on sulphur, in carloads, from Bryan Mound, Tex., to Connable, Ala., found on rehearing to have been unreasonable and reparation awarded.
2. Fourth section relief denied.

*J. P. Laffey and V. S. Thomas* for complainant.

*R. Walton Moore* for Director General of Railroads.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

In our original report herein, 47 I. C. C., 221, we found that a combination rate of 51 cents per 100 pounds, plus \$2 per car, charged on 10 carloads of sulphur, shipped from Bryan Mound, Tex., to Connable, Ala., between June 3, 1914, and July 24, 1915, both dates inclusive, was not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial, and dismissed the complaint. This rate was composed of a commodity rate of 15 cents from Bryan Mound to New Orleans, La., thence the sixth-class rate of 36 cents per 100 pounds, governed by the southern classification, to Boyles, Ala., and \$2 per car beyond. It applied in connection with the Gulf coast lines east of Houston, Tex., to New Orleans, and Louisville & Nashville Railroad from New Orleans to Connable. The record indicated that all the shipments moved over that route. It now appears that only five shipments moved over the route indicated, and that the remainder moved, as routed by complainant, over the Houston & Brazos Valley Railway to Houston, Southern Pacific lines to New Orleans, and Louisville & Nashville beyond. By that route the class C rate of 43 cents per 100 pounds, governed by the western classification, applied from Bryan Mound to New Orleans, which resulted in a combination through rate of 79 cents, plus \$2 per car. Charges were subsequently collected accordingly.

Upon complainant's petition, the case was reopened and further hearing had on July 22, 1918, solely on the question of reparation. By supplemental complaint filed on September 10, 1918, the Director General of Railroads was made a party defendant. He answered, but no further hearing was asked or had. Except as otherwise noted, rates are stated in cents per 100 pounds, and are those in effect immediately prior to June 25, 1918, on which date they were increased pursuant to General Order No. 28 issued by the Director General of Railroads.

On August 16, 1915, after these shipments moved, a rate of 29.15 cents, minimum 40,000 pounds, plus \$2 per car, was established from Bryan Mound to Connable, applicable to this traffic over both routes. On December 1, 1916, this rate was increased to 29.25 cents, plus \$2 per car, and reparation is sought on that basis.

The ton-mile earnings under the applicable and subsequently established rates are compared below with the yield under rates from Sulphur Mines, La., a competitive producing point on the Southern Pacific:

From—	To—	Miles.	Rate.	Ton-mile earnings.
Bryan Mound.....	Connable.....	<sup>1</sup> 847	79 cents, plus \$2 per car <sup>2</sup> .....	<i>Mills.</i> 18. 65
Do.....	do.....	<sup>4</sup> 862	29.25 cents, plus \$2 per car <sup>3</sup> .....	6. 9
			51 cents, plus \$2 per car <sup>3</sup> .....	11. 83
Sulphur Mines.....	do.....	644	29.25 cents, plus \$2 per car <sup>3</sup> .....	6. 79
Do.....	North Birmingham, Ala.	644	24.41 cents, plus \$2 per car <sup>4</sup> .....	7. 58
Do.....	Dossett, Tenn.....	874	27.45 cents.....	7. 79
				6. 28

<sup>1</sup> Via Southern Pacific.

<sup>2</sup> Applicable.

<sup>3</sup> Subsequently established.

<sup>4</sup> Via Gulf Coast lines.

<sup>5</sup> In effect when shipments moved; subsequently reduced to 24 cents, plus \$2 per car.

We find that the rates applicable were unreasonable to the extent that they exceeded 29.25 cents per 100 pounds, plus \$2 per car; that complainant made the shipments as described and paid and bore the charges thereon; and that it has been damaged and is entitled to reparation, with interest, in an amount represented by the difference between the charges paid and those that would have accrued at the rate herein found reasonable. Upon the present record we are unable to determine the exact amount of reparation due and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

The rates from Sulphur Mines, and the subsequently established rates from Bryan Mound, to Connable were and are lower than to intermediate points. The charging of lower rates from Sulphur Mines to Connable than to intermediate points was protected by fourth section applications, and pending action thereon the defendants were granted authority by Fourth Section Orders Nos. 3996 and 4964 to maintain rates from Bryan Mound to Connable and certain other points lower than to intermediate points. The applications protecting the adjustment from Sulphur Mines to Connable were heard with this case. No justification was offered in support thereof and the applications will be denied. It follows that the rates from Bryan Mound to Connable must be adjusted so as to eliminate the fourth section departures above mentioned.

An appropriate order will be entered.

52 I. C. C.

No. 10154.  
PINE PLUME LUMBER COMPANY  
v.  
ALCOLU RAILROAD COMPANY ET AL.

*Submitted December 3, 1918. Decided March 21, 1919.*

1. Rate on lumber, in carloads, from Gable, S. C., to East Norwood, Ohio, in effect at time of shipment, by way of Potomac Yard, Va., not shown to have been unreasonable. No basis of record for finding as to subsequently increased rates.
2. Shipment found to have been misrouted and reparation awarded.

*G. W. Way* for complainant.

*Esmond Phelps* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

By DIVISION 3:

Complainant is a corporation engaged in the lumber business at Savannah, Ga. By complaint seasonably filed, as amended, it alleged that the charges collected on a carload of lumber, shipped November 29, 1916, from Gable, S. C., to East Norwood, Ohio, within the Cincinnati, Ohio, switching limits, were unreasonable to the extent that they exceeded the charges which would have accrued at a rate of 25 cents per 100 pounds, which the complainant avers would have been a reasonable maximum rate to apply. Reparation and the establishment of a rate not exceeding that to Cincinnati are asked. By supplemental complaint filed prior to the hearing the Director General of Railroads was made a party defendant. Rates are stated in cents per 100 pounds and are those in effect at the time of the hearing.

The shipment, which weighed 42,700 pounds, was delivered to the Alcolu Railroad at Gable routed merely "B & O delivery." It moved over the line of the initial carrier to Alcolu, S. C.; the Atlantic Coast Line Railroad and connections through Richmond to Potomac Yard, Va.; and the Baltimore & Ohio system to East Norwood. The applicable rate of 30 cents, which was also the rate in effect to Cincinnati, was assessed, but the shipment was overcharged \$6.05. Contemporaneously a rate of 25 cents, published by the Atlantic Coast Line and connections, applied from Gable by way of Augusta, Ga., to Cincinnati, and included Baltimore & Ohio delivery at East Nor-

52 I. O. O.



wood. It is admitted for the defendants that the shipment should have moved over the latter route. On June 1, 1918, the above rates were increased 1 per cent per 100 pounds following *The Fifteen Per Cent Case*, 45 I. C. C., 303, and on June 25, 1918, 5 cents per 100 pounds pursuant to General Order No. 28 issued by the Director General of Railroads.

We find that the rate charged on the shipment in question is not shown to have been unreasonable. The record affords no basis for a finding as to the subsequently established rates. We further find that the defendant Atlantic Coast Line Railroad Company misrouted the shipment; that complainant made the shipment as described and paid and bore the charges thereon; that it was damaged by the misrouting in the amount of the difference between the charges that accrued at the applicable rate and those that would have accrued at the rate contemporaneously applicable via Augusta; and that it is entitled to reparation from the Atlantic Coast Line Railroad Company in the sum of \$21.35, with interest; also to reparation from the defendants in the further sum of \$6.05, with interest, the amount of the overcharge above stated.

An appropriate order will be entered.

52 I. C. C.

No. 10157.

WALTER A. ZELNICKER SUPPLY COMPANY  
v.  
LOUISIANA WESTERN RAILROAD COMPANY ET AL.

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*Submitted November 25, 1918. Decided March 21, 1919.*

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Charges on a carload of steel relay rails from Gueydan, La., to East St. Louis, Ill., found to have been unreasonable. Reparation awarded.

*John D. Fidler* for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

By DIVISION 3:

The complainant, a corporation dealing in railway supplies at St. Louis, Mo., alleges by complaint filed April 13, 1918, that unreasonable charges were collected on a carload of steel relay rails shipped November 19, 1917, from Gueydan, La., to East St. Louis, Ill. Reparation only is asked. Rates are stated in cents per 100 pounds.

The shipment, weighing 53,400 pounds, was routed by the shipper "I. C." It appears to have moved over the Louisiana Western Railroad to Lafayette, La., 41 miles; the line of Morgan's Louisiana & Texas Railroad & Steamship Company to Baton Rouge, La., 57 miles; and Yazoo & Mississippi Valley and Illinois Central railroads beyond. Transportation charges were collected in the sum of \$363.12 at a supposed combination rate of 68 cents, composed of the fifth-class rate of 47 cents, governed by the western classification, to New Orleans and the commodity rate of 21 cents, applicable from both Baton Rouge and New Orleans to East St. Louis. Neither the 47-cent nor any other rate applied on this traffic to Baton Rouge. A fifth-class distance rate of 29 cents was applicable from Lafayette to Baton Rouge, but we are unable to locate any rate from Gueydan to Lafayette. As no rate was specifically applicable from Gueydan to East St. Louis it becomes necessary to determine whether the charges collected were reasonable and, if not, what charges would have been reasonable. *Memphis Freight Bureau v. K. C. S. Ry. Co.*, 17 I. C. C., 90.

52 I. C. C.

Complainant showed that effective August 1, 1914, the Railroad Commission of Louisiana prescribed a maximum rate of 12.5 cents on junk and iron and steel rails and fastenings between points in Louisiana for one-line hauls. Assuming that this shipment moved through New Orleans and using this rate to that point and the 21-cent rate beyond, it contends that 33.5 cents would have been a reasonable rate.

At the time of movement a commodity rate of \$5.40 per long ton applied on rails from East St. Louis to Gueydan. It was testified that the Southern Pacific and Louisiana Western published commodity rates on rails from New Orleans to main-line points, but apparently not to branch-line points. It is argued that inasmuch as, at the conclusion of the lumbering operations, rails used in connection therewith move outbound, commodity rates should have been provided for the outbound movement. Gueydan is on a branch line, about 11 miles south of Midland, the junction with the main line. At that time a rate of 16.5 cents for interstate application was in effect between New Orleans and points on the Louisiana Western, Sabine River to Mermentau, La., both inclusive, for distances of from 250 to 180 miles. Midland is the first station east of Mermentau. This rate, somewhat higher than the maximum fixed by the Railroad Commission of Louisiana, does not compare unfavorably with a number of other commodity rates cited by complainant applying in this territory.

Taking into consideration the fact that the route through Baton Rouge is considerably shorter than that through New Orleans, and the short distance from Gueydan to the main line, we are of opinion and find that a rate of 37.5 cents per 100 pounds, made up of the 21-cent rate beyond Baton Rouge plus the 16.5-cent rate applying from main-line points west of Midland to New Orleans, would have been a reasonable rate to have applied on this shipment. The Director General is not a party defendant and we fix no rate for the future. We further find that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges collected exceed those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$162.87, with interest. The Yazoo & Mississippi Valley Railroad is not a party defendant, but may participate in the payment of this reparation.

An order awarding reparation will be entered.

52 I. C. C.

No. 10028.

BRIGHT-BROOKS LUMBER COMPANY

*v.*HAMPTON & BRANCHVILLE RAILROAD & LUMBER  
COMPANY ET AL.

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*Submitted January 13, 1919. Decided March 21, 1919.*

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Rates on lumber, in carloads, from Miley, S. C., to Norfolk, Va., and North Philadelphia and Chester, Pa., not shown to have been unreasonable. Complainant not shown to have been damaged by the alleged undue prejudice. Complaint dismissed.

*Paul E. Seabrook* for complainant.*Ernest Williams* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

In its complaint filed January 12, 1918, the complainant seeks reparation, alleging that the rates charged on nine carloads of lumber shipped from Miley, S. C., four to Norfolk, Va., and two to North Philadelphia, and three to Chester, Pa., in August, September, and October, 1916, were unreasonable and unduly prejudicial to the extent that they exceeded by more than 2 cents per 100 pounds the rates contemporaneously in effect from Hampton, S. C., to the same destinations. The Director General of Railroads is not a party defendant. Rates are stated in cents per 100 pounds.

Miley is a local point on the line of the Hampton & Branchville Railroad & Lumber Company, a short line connecting with the Charleston & Western Carolina Railway and the Atlantic Coast Line Railroad at Hampton, 7 miles south of Miley. The Norfolk shipments moved over the Hampton & Branchville to Hampton, Charleston & Western Carolina to Yemassee, S. C., and Atlantic Coast Line beyond; the North Philadelphia shipments moved by the same route as far as Pinners Point, Va., and the New York, Philadelphia & Norfolk, the Philadelphia, Baltimore & Washington, and the Pennsylvania railroads beyond; and the Chester shipments moved by the last-named route as far as Belmont, Pa., and via the Philadelphia & Reading Railway beyond. Charges were collected at the following applicable joint rates: 17 cents to Norfolk, 25 cents to North Philadelphia, and 27 cents to Chester. The rates

to North Philadelphia and Chester were constructed on the basis of 17 cents to Pinners Point, plus the northern carriers' specifics of 8 and 10 cents, respectively, beyond.

The 25-cent rate to North Philadelphia was a so-called water-competitive rate which also applied to Chester, Pennsylvania Railroad delivery. The Chester shipment was delivered by the Philadelphia & Reading, and the rate applicable was the so-called normal rate, which was 2 cents higher than the water-competitive rate. The record does not show whether the complainant routed the Chester shipments over the Philadelphia & Reading. If not, they were misrouted.

Prior to July 1, 1912, the rate from Miley and other points on the Hampton & Branchville to Norfolk was 19 cents, while the rate from Hampton and other points on the Charleston & Western Carolina, which were constructed in the same general manner as the rates from Miley, was 15 cents. On July 1, 1912, the rate from Miley to Norfolk was reduced to 17 cents, while the rate from Hampton remained 15 cents. On August 15, 1916, the rate from Hampton to Norfolk in connection with the Charleston & Western Carolina was reduced to 13 cents, while the rate from Miley in connection with the same carrier remained 17 cents until January 5, 1917. On that date, after the shipments moved, the 17-cent rate from Miley to Norfolk was reduced to 15 cents, and on April 29, 1917, to 13 cents, the same as that applicable from Hampton and other points on the Charleston & Western Carolina.

The 25 and 27-cent rates from Miley to North Philadelphia and Chester, respectively, were established July 1, 1912, and remained in effect until August 18, 1917, embracing the period of movement. They were constructed on the basis of the southern carriers' rates from Miley to Norfolk or Pinners Point, plus the northern carriers' specifics beyond, except that from January 5 to April 29, 1917, they were 2 cents higher than rates made on that basis and thereafter 4 cents higher. Between October 6, 1916, and August 18, 1917, they were also 4 cents higher than the through rates from Hampton to North Philadelphia. On August 18, 1917, the through rates from Miley were reduced to the basis applicable from Hampton.

Substantially the only contention to support the allegation of unreasonableness is that during a portion of the period the rates assailed exceeded the rates from Hampton to the same destinations by more than 2 cents, whereas formerly they were but 2 cents over the rates from that point, and that subsequently the rates from both points became and are now the same.

Complainant's witness testified that in the purchase and sale of lumber complainant competed with purchasers of lumber who ship from points on the Charleston & Western Carolina; that when the ship-

ments moved it had competitors at Hampton; and that it sells lumber in the same general markets as do its competitors.

For the defendants it was testified that instructions were given by the Atlantic Coast Line, on November 30, 1916, shortly after the shipments moved, for a revision of the rates on lumber from Hampton & Branchville stations to destinations beyond the Virginia cities, observing 15 cents to the Virginia cities, but that reduction in those rates was not made until August 18, 1917, as previously shown; that the rates from Miley were not fixed with any particular relation to the rates from Hampton; and that they were changed independently from time to time as necessitated by competitive conditions. They contend that the applicable rates were reasonable *per se*. The distances over the route of movement from Miley are: To Norfolk, 476 miles; and to North Philadelphia and Chester slightly over 700 miles. There were cited on behalf of the defendants a large number of rates on lumber from points in the south to northern destinations with which the rates assailed compare favorably.

We find that the rates assailed are not shown to have been unreasonable. Any undue prejudice which may have existed has now been removed; and the record does not contain the proof of damage necessary to support an award of reparation under a finding of undue prejudice.

An order dismissing the complaint will be entered.

52 I. C. C.

No. 10200.

## REFINITE COMPANY

v.

## CHICAGO &amp; NORTH WESTERN RAILWAY COMPANY.

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*Submitted December 11, 1918. Decided March 28, 1919.*

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Charges on carload shipments of crude clay in bulk from Buffalo Gap, S. Dak., to Des Moines, Iowa, found to have been unreasonable. Reparation awarded.

*C. E. Childe* for complainant.

*A. S. Brooks* for defendant.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

The complainant, a corporation engaged in the manufacture of clay products at Omaha, Nebr., is said to be the successor in interest to the Des Moines Refining Company. By complaint seasonably filed, as amended, it alleges that the rate charged on eight carloads of crude clay in bulk shipped from Buffalo Gap, S. Dak., to Des Moines, Iowa, between April 23, 1915, and September 27, 1916, was unreasonable. Reparation only is asked. Rates are stated in cents per 100 pounds.

The shipments moved over the defendant's line through Blair, Nebr., and charges were collected at the applicable class E rate of 29 cents, minimum 40,000 pounds, governed by the western classification. Defendant contemporaneously maintained a commodity rate of 10 cents on crude clay, in carloads, minimum marked capacity of car but not less than 30,000 pounds, from Evans Quarry, S. Dak., by way of Buffalo Gap to Blair, and a proportional class E rate of 6.2 cents, minimum 40,000 pounds, governed by the western classification, from Blair to Des Moines. Conformably to rule 77 of Tariff Circular 18-A, defendant provided that a rate not in excess of the Evans Quarry rate would be published from Buffalo Gap and other intermediate points on one day's notice upon request. This was a substantial compliance with the requirements of the fourth section. *Kosse, Shoe & Schleyer Co. v. C., C. & St. L. Ry. Co.*, 41 I. C. C., 602. On January 3, 1917, the 10-cent commodity rate from Evans Quarry was canceled, and on March 8, 1917, a commodity rate of 22 cents, minimum 80,000 pounds, was established from Buffalo Gap to Des Moines.

52 I. C. C.

Complainant contends that the rate charged was unreasonable to the extent that it exceeded 16.2 cents, the aggregate of the intermediate rates from Evans Quarry to Des Moines based on Blair. Defendant proposed on the informal docket to make reparation on basis of the subsequently established commodity rate of 22 cents. Buffalo Gap is 673 miles from Des Moines and the 29-cent rate yielded 8.6 mills per ton-mile. The 16.2-cent rate would have yielded about 4.8 mills per ton-mile, and, based on the average weight of the shipments, 15.2 cents per car-mile.

We find that the charges collected were unreasonable to the extent that they exceeded those that would have accrued at the aggregate of the intermediate rates and applicable minima to and from Blair contemporaneously in effect from Evans Quarry to Des Moines; that the Des Moines Refining Company made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued on the basis herein found reasonable; and that complainant, or other lawful successor in interest to the Des Moines Refining Company, is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendant for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

52 I. C. C.



No. 10294.  
**AMERICAN AGRICULTURAL CHEMICAL COMPANY**  
*v.*  
**CENTRAL RAILROAD COMPANY OF NEW JERSEY ET AL**

*Submitted February 4, 1919. Decided March 28, 1919.*

Rates on acid phosphate, in carloads, from Carteret, N. J., to Philadelphia, Pa., found to have been unreasonable. Reparation awarded.

*A. J. Whitman* and *E. B. Leiby* for complainant.

*A. H. Elder* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

The complainant, a corporation engaged in manufacturing fertilizer at Carteret, N. J., alleges by complaint filed October 22, 1918, that the rates charged by the defendants on 38 carloads of acid phosphate shipped from Carteret to Philadelphia, Pa., between July 2 and September 28, 1917, inclusive, were unreasonable to the extent that they exceeded \$1.58 per net ton. Reparation only is asked. Rates are stated in amounts per net ton.

The shipments moved over the lines of the Central Railroad Company of New Jersey and Pennsylvania Railroad and charges were collected at the sixth-class rate, governed by the official classification, which was \$2 prior to August 1, 1917, and \$2.30 between that date and September 28, 1917, inclusive. Supplement No. 16 to Central Railroad Company of New Jersey tariff I. C. C. S. No. 1698, in effect at the time of movement, named a commodity rate of \$1.58 from Carteret to Philadelphia by way of defendants' lines on "fertilizers, bulk phosphate, and fertilizer materials," in carloads, as specified in that carrier's tariff I. C. C. S. No. 9005, exceptions to the official classification. The latter tariff made no reference to any fertilizers in straight carloads, but provided certain exceptions to the classification on "fertilizer and fertilizer materials, in mixed carloads," viz, fertilizer, acid phosphate, and other specified articles, and on fertilizer material, consisting of certain articles of waste, but not including acid phosphate, in straight or mixed carloads.

52 I. C. C.

For the complainant it is insisted that acid phosphate is a finished fertilizer and that defendants' tariffs were inconsistent in that while I. C. C. S. No. 1698 appeared to indicate that the \$1.58 rate applied on fertilizers in straight carloads as specified in I. C. C. S. No. 9005, the latter provided only for mixed carloads thereof. It was also urged for the complainant that acid phosphate is of considerably less value than some of the fertilizers accorded the \$1.58 rate in mixed carloads and that it is shipped in the same manner.

For the defendants it was admitted that the tariffs were ambiguous and on October 24, 1917, after the shipments moved, they specifically provided a commodity rate of \$1.58 on acid phosphate, in carloads, from Carteret to Philadelphia. A willingness was expressed to make reparation upon basis of that rate.

We find that the rates charged were unreasonable to the extent that they exceeded \$1.58 per net ton; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

52 I. C. C.

No. 9552.

NORTHWESTERN TRADING COMPANY, INCORPORATED,  
v.  
ADAMS EXPRESS COMPANY.

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*Submitted February 5, 1919. Decided March 31, 1919.*

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Express charges on horses, in carloads, from Pittsburgh, Pa., to Jersey City, N. J., found on reargument to have been unreasonable. Reparation awarded.

*J. H. Fishback* for complainant.

*Edward V. Conwell* and *T. B. Harrison* for defendant.

REPORT OF THE COMMISSION ON REARGUMENT.

BY THE COMMISSION:

This case relates to 352 horses moved by the Adams Express on December 17, 1915, from Pittsburgh, Pa., to Jersey City, N. J. About 4 p. m. on the date mentioned complainant's agent at Pittsburgh ordered sufficient commercial horse cars, which will hold from 28 to 35 horses each, for the transportation of these horses to Jersey City, from which point they were booked for shipment on a boat scheduled to sail the following day. No such cars were available and, as defendant's agent could give no assurance as to when they could be obtained, ordinary stock cars of smaller capacity, which were immediately available, were accepted and used. Seventeen of these cars were necessary; 13 cars of the kind ordered would have been sufficient. A per-car charge of \$150 was applied, and complainant seeks reparation in the amount of \$600, the difference between the charges paid and those that would have accrued on 13 commercial horse cars loaded with not in excess of 28 horses each. In our original report, 51 I. C. C., 211, we said:

A carrier is entitled to a reasonable time in which to furnish special equipment desired by a shipper and unless it is given reasonable notice of the shipper's requirements it is not liable for damages resulting from failure to furnish such equipment. It is apparent that the shipper could not even have waited 24 hours for the equipment desired; there was need for the utmost haste. Defendant offered the best equipment it had immediately available, which was accepted and used by the shipper.

It is our opinion upon this record that the defendant was under no legal obligation to comply with complainant's order for commercial horse cars within the short time necessary to meet complainant's requirements, and that

52 I. C. C.

the charges legally applicable upon the basis of the cars accepted and used are not shown to have been unreasonable.

An order dismissing the complaint will be entered.

Defendant relies upon the principle upon which our former report is based.

Official express classification No. 23, I. C. C. No. A-1450, which governed, provided as follows:

Par. 17. Horses, mules, cattle, jacks, colts, burros, or ponies, when not crated, must be accepted only by authority of the superintendent, which must be given only when the shipment is destined to a point at which facilities for handling such shipments are provided and after arrangements have been made for handling, transferring, and forwarding the shipment through to destination, if such arrangement can be made.

Par. 19. Live stock: In carloads, n. o. s. The charges must be made on an estimated weight of 10,000 pounds per car, minimum \$50 first class.

Par. 22. The carload rate will apply on each special car whether containing one or more animals, but not exceeding the maximum number wherever specified, and provided that the carload charge will not cover the transportation of any animals in excess of the capacity of the car used.

Par. 23. For each animal in the car in excess of the maximum number provided, charge in addition to the carload rate as follows:

\* \* \* \* \*

Par. 24. Horses, other than race horses, in stalled cars, one-twentieth of the carload rate. Horses, in cars not stalled, one-twenty-eighth of the carload rate.

Par. 26. The maximum number of animals which will be carried in one car at the carload rate is as follows:

\* \* \* \* \*

Horses, other than race horses, in stalled cars.....	20
Horses, in cars not stalled.....	28

It also provided that the classification rates would apply on horses only when the declared value did not exceed \$100 each, and that when the declared value exceeded that amount, an additional charge, based on a percentage of the excess valuation, would be made. The bill of lading covering this shipment is not of record, and in the absence of a showing as to what the value of these horses was declared to be, we are unable to determine the rate legally applicable. After this shipment moved defendant eliminated the provision for different rates on horses of the kind here in question dependent on their value, in accordance with the act as amended by the Cummins amendment of August 9, 1916.

Complainant does not attack the measure of the rate charged. It contends that defendant's tariff provided, in substance, for the transportation of a minimum carload of 28 horses at a charge of \$150 per car; that cars which would contain that minimum were ordered but not furnished; and therefore that it was unreasonable for defendant to charge more for the transportation of these horses in the cars fur-

nished than would have accrued if they had moved in commercial horse cars.

Defendant's tariff was amended on July 1, 1916, to include the following provision:

When the express company is unable to furnish a car of sufficient capacity to load the maximum number of animals, as provided above, the animals in excess of the capacity of the car furnished by the express company will be carried in another car without charge in addition to the carload rate.

As this is satisfactory to complainant, its only interest in this case is with respect to reparation, and the Director General of Railroads is not a party defendant.

Defendant denies that 28 horses is a minimum carload, but insists, on the contrary, that it is a maximum, and points to the provisions of paragraph 22 to show that the charge applies on any number of animals up to 28 loaded in a special car, it being stated that the term "special car" signifies merely a car used exclusively by one shipper.

The ordinary freight tariff publishes carload rates in amounts per 100 pounds with a certain carload minimum weight. The same per-car charge applies to shipments weighing the minimum or less, and the increase in the charges on shipments weighing more than the minimum is based on the rate per 100 pounds. While the charge assailed is published in a different form there is no substantial difference in the result. The estimated weight of 10,000 pounds appears to be merely an arbitrary amount used to determine a per-car charge, which charge applies to the transportation of a carload of any number of horses up to 28, with one twenty-eighth added for each additional horse. Substantially the same result would be obtained by publishing the rate per horse with a minimum of 28 horses. The effect of the tariff provisions was to provide a per-car charge in connection with a flat carload minimum of 28 horses applicable without restriction to any sized car. It follows, therefore, that the cars furnished for the transportation of these horses would not contain the minimum applicable in connection with the rate.

We find that defendant's failure to have a follow-lot rule in effect at the time of movement was unreasonable; that complainant made the shipment as described and paid and bore the charges thereon; that in so far as the charges paid exceeded those that would have accrued had the follow-lot rule been in effect at the time of movement complainant has been damaged and is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipment in accordance with rule V of the Rules of Practice, also specifying the dates on which the

52 I. C. C.

charges were paid, which statement should be submitted to defendant for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

HALL, *Commissioner*, dissents.

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No. 10213.

ANHEUSER-BUSCH BREWING ASSOCIATION  
v.  
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY  
COMPANY ET AL.

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*Submitted November 26, 1918. Decided March 28, 1919.*

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Defendants' rule, published as an exception to the western classification, providing for the application of 15 per cent of the appropriate class rates, from Clifton, Ariz., to El Paso, Tex., on shipments of returned empty beer containers from Clifton to the original consignor of the filled containers, at St. Louis, Mo., construed. Complaint and supplemental complaint dismissed.

*R. Muehlberg* for complainant.

*James M. Chaney* for all defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

This complaint, filed June 25, 1918, assails as illegal the rate charged on a carload of returned empty beer packages shipped October 30, 1914, from Clifton, Ariz., to St. Louis, Mo. The claim was filed with the Commission informally April 29, 1916. The prayer for reparation was withdrawn at the hearing, because complainant was unable to show by whom the charges were borne, and the complainant seeks no relief other than an interpretation of the applicable tariffs. By supplemental complaint filed prior to the hearing the Director General of Railroads was made a party defendant.

The shipment, which consisted of returned empty beer kegs and bottles, appears to have moved initially over the Arizona & New Mexico Railway to Hachita, N. Mex., the El Paso & Southwestern Railroad through El Paso, Tex., and the Chicago, Rock Island & Pacific system to destination. Defendants' tariffs provided a mixed  
52 I. C. C.

carload commodity rate and alternative separate class rates on the kegs and bottles from Clifton to El Paso, together with a joint rate applicable to mixed carloads from El Paso to St. Louis. Complainant contends that it was entitled under the tariffs to 15 per cent of the class rates up to El Paso, on which basis the shipment was overcharged, and this is the sole issue.

Certain requirements, such as prepayment or guaranty of charges, identity of the containers, etc., were provided by the tariffs, and for present purposes it will be assumed that they were complied with in each instance. The issue turns upon the following provision, published as an exception to the western classification governing the rates up to El Paso, and in effect at the time of movement:

Empty packages or carriers (not new packages), not otherwise specified herein, having been used by dealers in transporting property, and returned to shippers over the same route and line as the original outbound movement or when shipped to dealers for return paying load over the same route and line as the outbound movement, empty, 15 per cent of class rates per the current western classification, or as may be amended in this exception sheet, applying on same packages new, will be applied. Less-than-carload shipments will be subject to minimum charge applicable to same kind of carrier, empty, second hand, returned, at less than carload rating provided by current western classification. \* \* \* (See notes 1, 2, and 3.)

NOTE 3.—Will not apply on shipments of empty beer packages returning from points on lines of Southern Pacific Company in Arizona and New Mexico to Deming, N. Mex., El Paso, Tex., and points between, nor between points on Arizona & New Mexico Railway.

The questions presented are, whether the reduced basis applies to shipments of returned empty beer containers (1) from points on the Arizona & New Mexico Railway to points on other lines, and (2) from a point on that line to the consignor of the filled containers at St. Louis, and only over the same route throughout, or merely to shipments to an original consignor at El Paso, over the route of the movement of the filled containers from that point.

At the time of movement a joint commodity rate on returned empty packages, higher than the combination of rates to and from El Paso claimed by complainant, was named from Clifton to St. Louis, but, as an alternative, the tariff provided for the application of the intermediate rates if aggregating less than the through rate.

While at least one of the defendant lines between Clifton and El Paso construes the concluding clause of note 3 of the provision as simply a continuation of the negation expressed in the preceding portion of the note, and therefore as precluding an application of the reduced basis to such shipments from points on the Arizona & New Mexico to points beyond that line, we can not accede to that view. Whatever may have been intended, the respective restrictions in the

52 I. C. C.

note, the one relating to shipments "from points" on the Southern Pacific and the other to shipments "between points" on the Arizona & New Mexico, do not express or suggest the same thing but are distinctly different. In their usual and natural significance, the words "between points" on the latter line are equivalent to "from and to" such points, and thus relate only to local movements. This view is expressed of record on behalf of the defendant Chicago, Rock Island & Pacific Railway Company.

In answer to the second question it need only be pointed out that the provision for the reduced basis is in terms applied and confined to shipments of empty containers returned to the original shippers, in this case at St. Louis, moving "over the same route and line as the original outbound movement," or "shipped to dealers for return paying load over the same route and line as outbound movement." While it is true that in the specific instance the reduced basis would apply only to that portion of the route taking the class rates, viz, from Clifton to El Paso, and for all practical purposes the reciprocal movement might concern only the lines between those points, the full provision is not so limited and we are not at liberty either to restrict or enlarge it by construction.

Any outstanding overcharges should be promptly refunded, with interest, to the party or parties entitled thereto. An order dismissing the complaint and supplemental complaint will be entered.

52 I. C. C.



No. 9237.<sup>1</sup>

## NATCHEZ CHAMBER OF COMMERCE

v.

ARANSAS HARBOR TERMINAL RAILWAY COMPANY  
ET AL.

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*Submitted October 21, 1918. Decided March 25, 1919.*

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1. Class rates between Natchez, Miss., and Texas points found unreasonable and unduly prejudicial to the extent that they exceed for like distances class rates contemporaneously maintained between Shreveport, La., and Texas points.
2. Class rates between Natchez and Houston-Galveston group found unduly prejudicial in so far as they exceed for like distances the class rates contemporaneously maintained between Shreveport and Texas points in common-point territory.
3. Carload rates on cattle, horses, and mules from Texas points to Natchez found unduly prejudicial to the extent that they exceed, for distances of 750 miles or less, the rates for like distances contemporaneously maintained from Texas points to Shreveport, La., and, for distances greater than 750 miles, the rates from the same points to Shreveport by more than 6 cents per 100 pounds.
4. Carload rates on salt from Grand Saline, Tex., to Natchez, Miss., found unduly prejudicial to the extent that they exceed rates contemporaneously maintained from Grand Saline to Vicksburg, Miss., and New Orleans, La.
5. Carload rate of 23 cents on cement plaster from Acme and Plasterco, Tex., to Natchez found to have been and to be unduly prejudicial to the extent that it exceeded and exceeds rates from the same points to New Orleans and Vicksburg, and unreasonable to the extent that it exceeded 18 cents per 100 pounds prior to June 25, 1918, and subsequent to that date to the extent that it exceeded and exceeds 20 cents per 100 pounds.
6. Portions of fourth-section applications of defendants which seek authorization to maintain class and commodity rates between Natchez and Texas points higher than the aggregate of intermediates, to maintain rates between Natchez and Texas points other than the Houston-Galveston group which are lower than the rates contemporaneously maintained on like traffic from, to, or between intermediate points, and to maintain rates on cement plaster from Acme and Plasterco, Tex., to Jackson, Miss., and New Orleans, La., which are lower than the rates contemporaneously maintained on like traffic to Natchez, denied.

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<sup>1</sup> This proceeding also embraces complaint in No. 8860, Natchez Chamber of Commerce et al. v. Atchison, Topeka & Santa Fe Railway Company et al and portions of Fourth Section Applications Nos. 378, 461, 602, 1552, 2043, 4218, 4219, 4963, 1950, 488, 601, 620, 625, 628, 631, 636, 677, 678, 689, 693, 700, 701, 792, 793, 794, 795, 796, 797, 798, 1555, 1951, 2043, 4220, 4944, and 4964.

7. Portions of Fourth Section Application No. 677 which seek authorization to maintain lower rates on salt from Grand Saline to Natchez than to intermediate points on the Texas & Pacific Railway, Willow Glen to Ferriday, La., inclusive, granted as to points on the Texas & Pacific between Addis and Ferriday, La.
8. Carriers representing indirect lines between Natchez and points in Texas authorized to meet rates made by direct lines and to continue higher rates to intermediate points, provided such intermediate rates do not exceed the scales prescribed.

*B. F. Martin* for Natchez Chamber of Commerce.

*Fred. H. Wood, George Thompson, Denegre, Leovy & Chaffe, Baker, Botts, Parker & Garwood, Frank Koch, and B. S. Atkinson* for all defendant lines in Texas, Louisiana, and Arkansas; and *H. R. Wilson* for Mississippi Central Railroad Company.

*F. A. Lallier* for Chamber of Commerce of Houston, Tex., Waco Chamber of Commerce, Fort Worth Freight Bureau, and Chamber of Commerce & Manufacturers' Association, freight bureau department, of Dallas, Tex.; *John A. Smith* for New Orleans Joint Traffic Bureau; *H. J. Fernandez* for Monroe, La., shippers; and *W. H. Fitz Hugh* for Board of Trade of Vicksburg, Miss.

*R. Walton Moore* for Director General of Railroads.

#### REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner*:

In No. 9237 the Natchez Chamber of Commerce complains that the class rates and certain commodity rates applicable on traffic between Natchez, Miss., and points in the state of Texas are unjust and unreasonable *per se*, unduly prejudicial to shippers located at Natchez, and unduly preferential, particularly of their competitors located at Shreveport and New Orleans, La., Memphis, Tenn., St. Louis, Mo., and at points within the state of Texas.

The complaint also alleges that the through rates between Natchez and points in eastern Texas on all of the classes and many of the commodities are higher than the aggregate of intermediate rates subject to the act, and therefore in violation of section 4. The situation with respect to through rates from Natchez to Texas points which exceed the aggregate of intermediates is covered by the Commission's order in *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, the effective date of which, however, has been postponed so as to permit a readjustment harmonious with the action taken in *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C., 105, hereinafter cited as the *Natchez Case*, and *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, and 48 I. C. C., 312, hereinafter cited as the *Shreveport Case*. Numerous  
52 I. C. C.

fourth section applications, by which defendants seek authority to continue rates from points in Texas to Natchez higher than the aggregates of intermediate rates, other applications for authority to continue to charge lower rates between Natchez and Texas points than the rates contemporaneously maintained on like traffic from, to, or between intermediate points, and an application for authority to continue to charge lower rates on cement plaster from Acme and Plasterco, Tex., to Jackson, Miss., and New Orleans, La., than to Natchez and other intermediate points were set for hearing herewith and will be dealt with in this report.

In No. 8860, the Natchez Chamber of Commerce and R. Scudamore, jr., attack the carload rate of 23 cents per 100 pounds on cement plaster from Acme and Plasterco, Tex., to Natchez as unreasonable, unduly prejudicial to shippers there located, and unduly preferential of shippers at New Orleans, La., Vicksburg and Jackson, Miss., and other points. The complaint prays for the establishment of a rate of 18 cents from the points named and for reparation on past shipments in so far as the charges exacted exceed that amount.

The Vicksburg Board of Trade and shippers located at Monroe, La., were permitted to intervene in behalf of the complaint in No. 9237, and the Chamber of Commerce of Houston, Tex., the Waco Chamber of Commerce, the Fort Worth Freight Bureau, and the Chamber of Commerce & Manufacturers' Association, of Dallas, Tex., in opposition to the complaint. The New Orleans Joint Traffic Bureau also intervened, and seeks the maintenance of the present rate relationship of Vicksburg, Natchez, and New Orleans on traffic to or from Texas, and asks that whatever reductions are made in rates to and from Natchez be made in like measure to and from New Orleans.

Subsequent to the hearing and argument in these cases the principal defendants were taken under federal control and in compliance with General Order No. 28, of the Director General of Railroads, the rates in issue were increased effective June 25, 1918. By supplemental complaints in both 9237 and 8860 the complainants joined the Director General as a party defendant and put in issue the increased rates which he initiated. Answers were filed by the Director General, who waived further hearing. All rates referred to herein are rates which prevailed prior to the effective date of the increased rates initiated by the Director General.

#### CLASS RATES.

The group adjustment of rates to and from common-point territory and differential territory in Texas is described in the *Shreveport Case*. The boundaries of these territories are fully defined in

that report and need not be repeated here. The rates to and from differential territory are made by adding to the common-point rates certain differentials which increase according to distances. The class rates from Natchez and other Mississippi River crossings to Texas are typical of those in the opposite direction, and the class rates to common-point territory are the same from Natchez as from Memphis. However, from Vicksburg, which is located between Natchez and Memphis, the rates to common-point territory are the same as from New Orleans. As is indicated below, the rates from New Orleans are on most classes slightly less than the rates from Natchez to common-point territory:

From—	Classes.									
	1	2	3	4	5	A	B	C	D	E
Natchez and Memphis .....	\$1.37	\$1.15	\$0.96	\$0.89	\$0.70	\$0.72	\$0.65	\$0.53	\$0.41	\$0.34
New Orleans and Vicksburg .....	1.37	1.15	.94	.87	.69	.72	.64	.52	.40	.33
Difference .....	.....	.....	.02	.02	.01	.....	.01	.01	.01	.01

That it is obviously improper to group Natchez with Memphis while Vicksburg is grouped with New Orleans is recognized by the defendant carriers, who are ready to accord Natchez the New Orleans rates to and from common-point territory excluding the Houston-Galveston group. Rates to that group are lower from New Orleans than from Natchez or Vicksburg, which adjustment will be referred to later on. However, as shown by the rate comparison above, this readjustment will not effect material changes in the Natchez rates.

The complainant prays for the establishment of the same distance scale of class rates between Natchez and Texas points as was originally prescribed for traffic between Shreveport and Texas points in the *Shreveport Case*. That scale was also applied with some variations for distances over 400 miles between Ruston, La., and Texas points in compliance with our order in *Thompson, Ritchie & Co. v. V., S. & P. Ry. Co.*, 39 I. C. C., 287, hereinafter referred to as the *Ruston Case*. Prior to these decisions group rates beginning with \$1.05 first class applied between Shreveport and most of Texas common-point territory; and the New Orleans rates beginning with \$1.37 first class were applied between Ruston and all of Texas common-point territory. Upon the argument the complainant stated that the application to traffic between Natchez and Texas points of the distance scale prescribed in *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 224, hereinafter called the *Memphis Case*, on traffic from Memphis to Louisiana points and applied to traffic from Memphis to Marshall and Jefferson, Tex., in

*Cities of Marshall and Jefferson, Tex., v. T. & P. Ry. Co.*, 39 I. C. C., 249, would likewise be satisfactory and would afford the relief prayed for. The complainant also referred to the distance scale prescribed in *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, 23 I. C. C., 688, and 26 I. C. C., 520, hereinafter called the *Oklahoma Case*, as indicating a fair measure for rates between Natchez and Texas points. The Shreveport scale and the Oklahoma scale have each been revised subsequent to the bringing of these complaints, the former by our second report in the *Shreveport Case*, and the latter by our report in *Southwestern Class Case*, 48 I. C. C., 379. In the rate comparisons given below the revised scales are used rather than the scales referred to by the complainant.

The shippers at Natchez are primarily concerned with the rates to points in Texas east of a line running north and south through Fort Worth, which territory embraces the area of densest population; and the complainant contends that reasonable rates for the average distance to all of common-point territory would not be fair and just to the eastern half of that territory, to and from which most of the traffic moves.

Comparisons are offered which show that the rates between Natchez and Texas points are considerably higher in each instance than rates for like distances prescribed in the cases above referred to. These comparisons are summarized below.

*Class rates in cents per 100 pounds.*

Points from and to which rates apply.	Distance.	Classes.									
		1	2	3	4	5	A	B	C	D	E
Natchez to Texas common points, average.....	<i>Miles.</i> 403	137	115	96	89	70	72	65	53	41	34
Natchez to:											
Marshall, Tex.....	233	137	115	96	89	70	72	65	53	41	34
Jefferson, Tex.....	246.8	137	115	96	89	70	72	65	53	41	34
Between Shreveport and Texas points.....	451										
Between Texas points in common point territory.	and over. <sup>1</sup>	112	96	78	67	54	58	45	39	33.5	28
Between Oklahoma points and Texas points for two-line hauls (distance scale 48 I. C. C., 312 and 379).....	231-240	93	79	65.5	56	45	48	38	33	27.5	23
From Memphis, Tenn., to points in Louisiana and southern Arkansas, for two-line hauls.....	470	129	110	90	77	65	67	52	45	39	32
Distance scale, 39 I. C. C., 224 <sup>2</sup> .....	240	90.5	77	63.5	54.5	45	47	36	31.5	27	22.6

<sup>1</sup> These rates apply wherever the Texas haul is wholly within common-point territory between Shreveport and Texas points and between Texas points, for all distances over 450 miles. The maximum hauls at these rates are for approximately 560 miles.

<sup>2</sup> No distinction made between one-line and two-line hauls. The scale given in the report is confined to distances of 200, 300, 400, and 500 miles. The rates here indicated are arrived at under a proper graduation for intermediate distances.

This table shows that for distances approximating the average distance to common-point territory the Shreveport, Oklahoma, and Memphis scales provide lower rates for two-line hauls than the rates complained of from Natchez to common-point territory. But comparison with the rates for the average distance from Natchez to Texas common points is perhaps not fair to the complainant in view of the fact that complainant is primarily interested in the rates for shorter hauls to points in the eastern half of this territory. Consequently the comparison is made above of the rates from Natchez to Marshall and Jefferson, which are near the boundary line between Texas and Louisiana, with rates for like distances provided by the scales referred to. The differences here are pronounced. The first-class rate complained of from Natchez to both points is the same as to all Texas common points, namely, \$1.37. The distance scales provide first-class rates ranging from 90.5 to 93 cents for like distances and two-line hauls.

This situation will be relieved in part when the carriers comply with our order in *Through Rates to Points in Louisiana and Texas*, *supra*, by revising their through rates so as not to exceed the aggregates of intermediates. But even then the difference between the Natchez rates to Marshall and the distance rates referred to will be substantial. In this respect the situation at Marshall is typical of that at other points in eastern Texas.

An illustration of the unreasonableness of the rates from Natchez to eastern Texas is afforded by a comparison with the rates from Memphis to Marshall. The first-class rate of \$1.14 from Memphis, based upon the scale fixed in *Cities of Marshall and Jefferson, Tex.*, *supra*, is 23 cents less than the first-class rate from Natchez, whereas the distance from Memphis is 119 miles greater and the haul is over two lines.

The complainant introduced evidence to show that the ratio of operating revenue to operating expenses, number of tons carried 1 mile per mile of road, average earnings per ton-mile, operating expenses per mile of road, and number of passengers carried 1 mile per mile of road, for the carriers in Louisiana compare favorably with the showing in these respects of the Texas lines.

The volume of business between Natchez and Texas points is not great at the present time. The evidence shows the number of wholesale and jobbing concerns and industries located at Natchez. Grain and seed dealers there located ship seed at class rates to Texas points in considerable quantities in competition with dealers located at New Orleans, Shreveport, Houston, Dallas, Sherman, and Fort Worth. Natchez jobbers handle Texas salt in competition with jobbers located at Vicksburg. A Natchez coffee roaster does a small amount of

business in Texas in competition with Houston, Tex., and Monroe, La., and desires under more favorable rates to extend his Texas territory. Natchez dealers purchase horses and mules in Texas.

The defendants contend that they should not be required to break up common-point territory any further than will be occasioned by the revision of through rates so as not to exceed the aggregates of intermediate rates; that the Natchez rates must be regarded as group rates to all of common-point territory, and that, so regarded, they are reasonable; and that the establishment of a distance scale from Natchez will lead to the disruption of common-point territory from all gateways.

The defendants compare the Natchez rates to and from Texas points with the distance rates prescribed in the various cases above referred to, adopting, however, as a basis for comparison, the average distance of 590 miles from Natchez to a limited number of Texas points "via various practical and customary routes," which defendants claim is a fairer basis for comparison than the distance of 463 miles used above. The latter figure, also computed by defendants, is the average short-line distance from Natchez to a railroad station in each county in common-point territory to which the \$1.37 scale applies from Natchez. Defendants, in arriving at the average distances indicated, added 20 constructive miles to the distances from Vidalia, La., for the river transfer Natchez to Vidalia. In making their rate comparisons they add differentials beginning with 12 cents first class to the single-line rates prescribed in the *Shreveport*, *Oklahoma*, and *Memphis Cases* on the ground that traffic between Natchez and Texas common points in all cases moves over three or more lines, while traffic between Shreveport and Texas points or between stations in common-point territory moves in large quantities over a single line. The comparisons made by defendants on this basis are, in our opinion, not representative. The average short-line distance from Natchez to Texas common points of 463 miles is more appropriate, since the distance rates prescribed in the *Shreveport*, *Oklahoma*, and *Memphis Cases* apply via the short routes, and since the comparisons which have been made are with the rates prescribed in these cases for joint-line applications, which rates, as to the first two cases named, are arrived at by adding differentials beginning with 8 cents first class to the single-line rates. From Ruston the haul to Texas points is in each instance over two or more lines and in the *Ruston Case* the Commission required the carriers to apply the Shreveport joint-line scale on the basis of the short-line distances. However, the addition of 20 constructive miles for river transfer at all lower Mississippi River crossings, Vicksburg to New Orleans, including Natchez, is provided in applying the distance scale pre-

scribed in the *Natchez Case*, and is likewise provided for application to our findings throughout this report.

The defendants rely upon *Williams Co. v. V., S. & P. Ry.*, 16 I. C. C., 482, and *Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co.*, 32 I. C. C., 247, in support of their position that only the average distance to common-point territory, and not the distances to specific destinations, should be regarded in determining the reasonableness of the Natchez rates. In both cases our decisions were based upon the ground that to grant the complainant's prayer would be to disrupt the grouping of Texas common points and that the record submitted did not warrant such action by the Commission. Since these reports were issued a number of other complaints have been filed dealing with the common-point adjustment. The breaking up of common-point territory by the establishment of a distance scale to be applied between Shreveport and points on certain Texas lines in the original *Shreveport Cases*, 23 I. C. C., 31, 234 U. S., 342, and 34 I. C. C., 472, was extended so as to cover the entire territory in the new *Shreveport Case*. In the *Ruston Case* this finding was extended to cover Ruston. Compliance with our order in *Through Rates to Points in Louisiana and Texas* will effect a considerable disturbance of the common-point adjustment to and from all points in Louisiana and all Mississippi River crossings Memphis and south thereof. Marshall and Jefferson were taken out of common-point territory on traffic from Memphis in *Cities of Marshall and Jefferson, Tex., supra*, the order in which case, however, was held in abeyance pending a decision in the *Natchez Case*. In *Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.*, 40 I. C. C., 619, we fixed lower rates on certain commodities from St. Louis to points in northeast Texas, including Dallas and Fort Worth, than to the rest of common-point territory and said, at page 644:

Group rates can be considered just and reasonable only in so far as they do not effect unjust discrimination.

The defendants are correct in asserting that when comparisons are made with group rates the nature of those rates must be borne in mind. However, this can not be advanced as justification for group rates which are unduly prejudicial. Even if the rates from Natchez for the average distance of 463 miles to common-point territory be regarded as reasonable, which however, the rate comparisons made do not indicate, they can not be regarded as reasonable to points in Texas near the Louisiana boundary. For example, the distance from Natchez to Marshall is 238 miles as compared with 381.5 miles from Marshall to Sweetwater, Tex., and 606.4 miles from Natchez to Sweetwater. This rate situation may be described as a great pan having a diameter longer than the handle, the pan representing the



common-point area and the handle being the line from Natchez to the eastern boundary of Texas. We can not approve of unreasonably high rates from Natchez to the nearest points in Texas merely to preserve the parity of rates to all points within the common-point group.

However, the defendants argue that if the grouping of Texas common points is abandoned in rates to and from Natchez, it must necessarily be abandoned in rates to and from New Orleans, Vicksburg, Memphis, and St. Louis; and that as a further consequence there will be a disruption of the grouping of the points of origin in defined territories, described in *Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.*, *supra*, at pages 624 and 625, from which rates to common-point territory are at present made by differentials over or under the rates from St. Louis to that territory. Upon this point we said at pages 636 and 637 of the report in the case just cited:

It is perfectly evident that any attempt on the part of this Commission to satisfy in any material manner the complaint before us involves the eventual breaking up of the Texas common-point group. A very large portion of the traffic to Texas comes from the northeast through St. Louis, Kansas City, and other gateways. Another material portion comes from the east through the gateways of Memphis, Vicksburg, and New Orleans. The great bulk of the Atlantic seaboard traffic comes water and rail via Galveston. Certain iron articles, sugar, and potatoes come from Colorado common points. We realize fully, and these complainants admit, that if the northeast portion of the state is entitled to lower rates than the rest of common-point territory on business from St. Louis the eastern section has as good a claim for lower rates on business through Memphis, Vicksburg, and New Orleans, the southern portion of the state on business through Galveston, and the northwestern portion for lower rates than to the rest of the state on business from Colorado. But the issue upon which this complaint has been based, and the proceedings had thereon, are not broad enough to permit us, if we desired to do so, to undertake this division of common-point territory.

It is our duty, however, with all these things in mind, to examine the testimony furnished respecting the propriety of these rates, to give to it due consideration, and to make such findings as the circumstances appear to require, although we may be well aware that such action may lead to further readjustments, and possibly to other complaints.

The defendants offered no convincing evidence in support of their contention that if the Natchez rates are reduced the same competitive conditions which brought about the present grouping of Texas common points will eventually bring about the reestablishment of common-point territory from Natchez on a lower basis of rates than those at present in effect.

The Texas interveners contend that the present Natchez rates are fair and reasonable and that any reduction in the less-than-carload class rates will be unduly prejudicial to Texas shippers and unduly preferential of shippers located at Natchez. The complainant originally prayed for the application to like distances to and from

Natchez of the single-line rates in effect between Shreveport and Texas points but upon the hearing stated that the request for this basis was erroneous and that it really desires the joint-line rates. The Texas interveners introduced exhibits comparing the single-line rates originally contended for by the complainant with the rates for like distances in effect from Houston to Louisiana points, the Shreveport joint-line scale, the Memphis scale, and with rates from Little Rock, Ark., to Texas points. They also pointed out that the then existing Shreveport scale reached a maximum for single-line hauls in common-point territory at 400 miles and for joint-line hauls at 250 miles, the rest of common-point territory being blanketed from Shreveport at the maximum rates. This blanket would be much greater from Natchez if the same maximum rates were observed. Adherence to the single-line maxima would result in lower rates from Natchez to the farther distant points than from Texas points for like distances within common-point territory. But the obvious remedy for this situation is to extend the scale from Natchez so as to provide for greater distances from Natchez than are provided from Shreveport or from Texas points in the scale prescribed in the *Shreveport Case*.

At present all points in Louisiana with the exception of a few points in the immediate vicinity of Shreveport and Ruston take the \$1.37 scale of class rates to and from common-point territory. Traffic between Natchez and Texas points traverses the entire state of Louisiana, and the application of a distance scale between Natchez and Texas points will undoubtedly break up common-point territory to and from practically all points in Louisiana, including New Orleans, and also to and from Vicksburg, Miss. While the rates to and from these points are not strictly in issue the effect upon them of changes made in the Natchez rates should be taken into account.

The New Orleans Joint Traffic Bureau, intervener, contends that both the New Orleans rates and the Natchez rates should be reduced, but that New Orleans, Baton Rouge, Natchez, and Vicksburg should be grouped to and from common-point territory other than the Houston-Galveston group. This intervener also prefers the maintenance of the common-point group, but suggests that if a distance scale is to be adopted it should be applied to and from points on the Mississippi River on the basis of a constructive mileage to the Texas border from all Mississippi River crossings, Vicksburg, and south. This would require the establishment of the same rates from New Orleans and Baton Rouge to Waskom, Tex., a point reached via Shreveport, for distances of 337 and 256 miles, respectively, as from Natchez and Vicksburg for distances of only 219 and 192 miles, respectively, and the same rates from Natchez and

Vicksburg to Sabine River, Tex., a point reached by a more southerly route, for distances of 253 and 302.4 miles, respectively, as from Baton Rouge and New Orleans for distances of only 163 and 250 miles, respectively.

The Vicksburg Board of Trade prefers the establishment of a distance scale to and from Vicksburg as well as Natchez. This intervenor believes that any other plan will give undue preference to Galveston on traffic to and from Dallas, Fort Worth, Paris, Clarksville, Denison, Sherman, and all points in Texas on and north of the main line of the Texas & Pacific, the distance to which from Galveston is practically the same as from Vicksburg, and states that—

\* \* \* It will hardly be possible to do justice to Vicksburg and Natchez under a grouping and differential plan as long as a mileage scale is applied from Galveston on the southwestern border of Texas and from Shreveport near the northeastern border of Texas.

Since under the Director General's Order No. 28 the same percentage increases in class rates were made from all points here involved, the inequalities disclosed by the comparisons made above are found to exist in greater measure under the increased rates subsequently published in accordance with that order.

The term "Texas common-point territory" as herein used will include the territory so described in the *Shreveport Case*. The class scale therein prescribed for distances not exceeding 500 miles was increased 25 per cent, effective June 25, 1918, by tariffs filed in compliance with the Director General's Order No. 28. We therefore find, considering all the facts of record, that the class rates between Natchez and Texas points in common-point territory are and for the future will be unreasonable and unduly prejudicial to the extent that they exceed or may exceed the rates contemporaneously in effect for like distances of 500 miles or less between Shreveport and Texas points in common-point territory and to the extent that they exceed or may exceed by more than 25 per cent the following extension of the Shreveport scale for distances in excess of 500 miles:

*Rates in cents per 100 pounds for single-line hauls.*

Miles.	Classes.									
	1	2	3	4	5	A	B	C	D	E
525.....	114½	97	80	69	56	60	46	40	34	29
550.....	117	99	82	70	56	61	47	41	35	29
575.....	119½	102	84	72	57	62	48	42	36	30
600.....	122	104	85	73	58	63	49	43	37	31
625.....	124½	106	87	75	60	65	50	43	37	31
650.....	127	108	89	76	61	66	51	44	38	32
675.....	129½	110	90	78	62	67	52	45	39	33
700.....	132	112	92	79	63	69	53	46	40	33
Over 700.....	133	112	92	79	63	69	53	46	40	33

Class rates for joint-line application should not exceed the rates above named by more than the following amounts:

Classes.....	1	2	3	4	5	A	B	C	D	E
Amounts.....	8	7	6	5	4	4	4	3	2	2

In fixing rates between Shreveport and differential territory, which includes all of Texas outside of common-point territory, the carriers add to the maximum rates applicable between Shreveport and common-point territory, a distance scale of class differentials.

We find that the present class rates between Natchez and differential territory are, and for the future will be, unduly preferential to the extent that they exceed or may exceed the maximum rates between Natchez and Texas common-point territory, ascertained as indicated above, by more than the differentials in cents per 100 pounds, for corresponding hauls in differential territory, applied on traffic to or from Shreveport.

The defendants contend that the rates between Natchez and the Houston-Galveston group are not covered by the complaint, which contention is not sustained.

With respect to points in that group the complainant specifically alleges undue preference to New Orleans, Alexandria, and other Louisiana points. The rate relationship between Natchez and these points is illustrated by the following table:

*Distances and class rates in cents per 100 pounds.*

From—	To Orange, Tex.					To Beaumont, Tex.					To Houston, Tex.				
	Dis. tance.	Classes.				Dis- tance.	Classes.				Dis- tance.	Classes.			
		1	4	5	E.		1	4	5	E.		1	4	5	E.
Natchez, Miss.....	Miles. 260.1	137	89	70	34	Miles. 282.6	137	89	70	34	Miles. 364.8	137	89	70	34
Vicksburg, Miss.....	309.4	137	89	70	34	330	137	89	70	34	402.7	137	89	70	34
Memphis, Tenn.....	528	137	89	70	34	532	137	89	70	34	554	137	89	70	34
New Orleans, La.....	257	82	53	43	21	278	86	55	44	21	362	89	57	45	22
Alexandria, La.....	138	70	40	33	21	159	70	40	33	21	243	70	40	33	22
Shreveport, La.....	204.9	98	56	47	23	209	85	51	43	21	231	90	54	36	22

This table shows that the rates from Natchez are the same as from Vicksburg and Memphis to the Houston-Galveston group, although the distance from Memphis is in some cases over 200 miles greater, and that the rates from New Orleans and Alexandria for distances somewhat less than from Natchez are very much lower. Rates from Shreveport are made in accordance with the distance scale prescribed in the *Shreveport Case*, and are also less than from Natchez. The distances from Shreveport are considerably less than from Natchez.

The defendants assert that the rates from New Orleans to the Houston-Galveston group are depressed by water competition, which they contend does not obtain from Natchez. The history of the rates between New Orleans and this group is given in *New Orleans-Texas Rates*, 38 I. C. C., 1, 3. From November 26, 1907, to September 7, 1908, the rates from New Orleans to Houston and Galveston were on a 70-cent scale, thereafter and until March 17, 1916, on an 80-cent scale, and subsequent to the last-named date on an 89-cent scale. In that proceeding we permitted to become effective the present 89-cent scale, which had been suspended upon the protest of the New Orleans Joint Traffic Bureau. In the same proceeding we permitted the cancellation of a 60-cent scale of class rates called the "water scale" from New Orleans to Orange and Beaumont, which was limited to local shipments and was not applicable as a factor in constructing through rates. At page 5 of our report in that case we compared the rates to Orange, Beaumont, and Houston then under suspension, and which are the rates now in effect, with rates then in effect for like distances between Oklahoma and Texas points, showing that the rates to Orange and Beaumont are the same and to Houston somewhat lower than the Oklahoma-Texas scale. The rates between New Orleans and the Houston-Galveston group are also lower than the rates for like distances prescribed in the *Shreveport and Natches Cases*. In *Chamber of Commerce of Houston, Tex., v. I. & G. N. Ry. Co.*, *supra*, we found that the carriers had not justified the proposed increases of first-class rates from 70 to 80 cents between Houston and Louisiana points on the line of Morgan's Louisiana & Texas Railroad & Steamship Company, Alexandria to Torian, inclusive.

In view of all these considerations it is our opinion that the class rates between Natchez and the Houston-Galveston group are, and for the future will be, unduly prejudicial in so far as they exceed or may exceed class rates for like distances contemporaneously maintained between Shreveport and Texas points in common-point territory.

#### COMMODITY RATES.

The complaint in No. 9237 attacks specifically the carload commodity rates from Texas points to Natchez on cattle, horses and mules, hogs, sheep, and salt.

The carload rates of 39.5 cents on cattle, 55 cents on horses and mules, 50 cents on hogs, and 52.5 cents on sheep are the same for Marshall, Tex., to Natchez for a distance of 238 miles as from Marshall to St. Louis for a distance of 561 miles. The rate on horses and mules from Marshall to Natchez is also the same as the rate from Marshall to Denver, Colo., for a distance of 982 miles, nearly four

52 I. C. C.

times the distance from Marshall to Natchez. The rates from Marshall are identical with those from Fort Worth, San Antonio, Dallas, and other points in Texas common-point territory. The complainant prays for rates on cattle, horses, and mules from Texas to Natchez upon a distance scale identical with the scale prescribed for joint-line hauls in the *Shreveport Case*.

The defendants show that the rates on cattle to Natchez from points on the Texas & Pacific yield lower earnings per car-mile than the rates for like distances on cotton seed, wool, refined petroleum, bar iron, soap, cottonseed oil, and wheat, and in some instances lower than on cement and hides. The loading used for these various commodities in making this comparison is the average found by the Missouri, Kansas & Texas Railway to have been the result of its operations for the fiscal year ended June 30, 1916. Defendants contend that these comparisons show that the Natchez rates on cattle are too low when the character of that traffic and the return of empty equipment are considered.

We find that the present rates on cattle, horses, and mules, in carloads, from Texas points to Natchez, for distances of 750 miles or less, are and for the future will be unduly prejudicial to the extent that they exceed or may exceed the rates for like distances contemporaneously in effect from Texas points to Shreveport; and that for distances greater than 750 miles they are and will be unduly prejudicial to the extent that they exceed or may exceed the rates from the same points to Shreveport by more than 6 cents per 100 pounds. The complaint does not ask for any specific basis of rates on hogs and sheep and the record does not warrant a finding with regard to those rates. Defendants, however, will be expected to properly relate their rates on hogs and sheep, from Texas points to Natchez, to the rates on cattle arrived at in accordance with the finding above.

The carload rate on salt from Grand Saline, Tex., is 17.5 cents to Natchez, distant 331 miles, 12.5 cents to Vicksburg and New Orleans, distant 297 miles and 442 miles, respectively. We find that the carload rates on salt from Grand Saline to Natchez are, and for the future will be, unduly prejudicial in so far as they exceed the rates contemporaneously maintained from Grand Saline to Vicksburg and New Orleans.

#### CEMENT PLASTER.

Of the two complainants in No. 8860 the Natchez Chamber of Commerce is interested primarily in securing lower carload rates on cement plaster from Acme and Plasterco, Tex., to Natchez. The other complainant, R. Scudamore, jr., a dealer in building material

32 L. C. C.

at Natchez, seeks reparation to the extent of the alleged unreasonable charges collected on carload shipments of cement plaster from Acme to Natchez.

The complainants compare the rate of 23 cents, minimum 40,000 pounds on cement plaster in carloads, from Acme to Natchez with the rate of 18 cents from Acme to New Orleans, Baton Rouge, Monroe, Lake Providence, and Waterproof, La., and Ottumwa, Iowa; 19 cents to Jackson and Meridian, Miss.; and 22 cents to Chattanooga, Tenn. Plasterco generally takes the same rates as Acme to the destinations named above. In support of their contention that 18 cents is a reasonable rate from Acme to Natchez they also compare the revenue per ton-mile of 5.9 mills which that rate would yield for the short-line distance of 609.8 miles between those points with an average per ton-mile revenue yielded by rates prescribed by this Commission in certain cases indicated of 8.6 mills for an average distance of 352 miles. They offered various other comparisons between ton-mile revenue, carload minima, and value of cement plaster and other commodities.

The carriers offered no defense other than reference to the fact that certain interior Louisiana points take a 23-cent rate, the same as Natchez, that the Natchez rates are lower than the lowest combination of intermediates, and the argument that Natchez is not so important a gateway as Memphis, Vicksburg, or New Orleans, and may therefore take reasonably higher rates. In its answer the Chicago, Rock Island & Pacific included comparisons of the present rates on cement plaster, the distances and revenue per ton-mile and per car-mile over various routes from Acme and Plasterco to Natchez, Vicksburg, and New Orleans.

In compliance with General Order No. 28 of the Director General, rates of 20 and 25 cents, respectively, were established from Acme to New Orleans and Natchez, effective June 25, 1918. We find that the rate assailed on cement plaster is shown to have been, and to be, unduly prejudicial to the extent that it exceeded, and exceeds, the rates contemporaneously maintained from Acme and Plasterco to New Orleans and Vicksburg, and unreasonable to the extent that it exceeded, prior to June 25, 1918, 18 cents per 100 pounds, and subsequent to that date to the extent that it exceeded, and exceeds, 20 cents per 100 pounds. We further find that complainant, R. Scudamore, jr., made the shipments as described and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate of 18 cents per 100 pounds on shipments made prior to June 25, 1918, and the rate of 20 cents per 100 pounds on shipments made sub-

52 I. C. C.

sequent to that date, which rates are herein found reasonable; and that he is entitled to reparation with interest. The exact amount of reparation due can not be determined upon this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, and in addition the dates on which the freight charges on each shipment were paid, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

#### FOURTH SECTION APPLICATIONS.

On behalf of the carriers parties thereto it was stated upon the hearing that "they had no justification to offer in connection with" the portions of their Fourth Section Applications Nos. 378, 461, 689, 602, 1552, 1950, 2043, 4218, 4219, 4220, and 4963 by which they seek authority to continue to charge for the transportation of classes and commodities from points in Texas described in the complaint to Natchez, rates which are higher as a through route than the aggregate of the intermediate rates. The carriers indicate their willingness to conform to the fourth section in this respect. As to the portions of the applications above indicated, relief from the provisions of the fourth section is therefore denied. Relief is also denied as to that portion of Fourth Section Application No. 625, by which the carriers parties thereto seek authority to continue rates for the transportation of cement plaster from Acme and Plasterco to Jackson and New Orleans, which are lower than the rates contemporaneously in effect on like traffic to Natchez and other intermediate points.

There were also set for hearing in connection with this proceeding such portions of Fourth Section Applications Nos. 488, 601, 620, 628, 631, 636, 677, 678, 693, 700, 701, 792, 793, 794, 795, 796, 797, 798, 1555, 1951, 2043, 4218, 4219, 4220, 4944, and 4964 by which the carriers named as parties thereto ask authority to continue to charge for the transportation of classes and commodities between Natchez and points in Texas described in the complaint, rates which are lower than the rates contemporaneously maintained on like traffic from, to, or between intermediate points.

Based upon their contention that the rates between Natchez and the Houston-Galveston group are not covered by the complaint, carriers ask that no determination be reached with regard to such portions of the fourth section applications enumerated as cover departures from the long-and-short-haul clause in rates between Natchez and points in the Houston-Galveston group. The carriers indicated that the fourth section situation is different with respect to the Houston-



Galveston group than with respect to Texas common points generally, principally due to the fact that the through rates to the first-named group are frequently made by combination of intermediate rates which the carriers allege are unduly low and compelled. These applications will be set for further hearing.

The carriers announced their willingness to revise their rates so as to conform to the provisions of the fourth section as to a considerable number of the departures from the long-and-short-haul clause in rates between Natchez and Texas common-point territory other than the Houston-Galveston group. The only departures from the fourth section which the carriers sought to defend are covered by Application No. 677 of F. A. Leland, agent, which are incurred by reason of the fact that the rates on salt from Grand Saline to Natchez via the Texas & Pacific to Ferriday and the St. Louis, Iron Mountain & Southern beyond is 17.5 cents, whereas the rate to points on the Texas & Pacific from Willow Glen to Ferriday, inclusive, is 20 cents.

The distance to Natchez via this route is 485 miles and the 17.5-cent rate is maintained to meet the rate of the short line composed of the Texas & Pacific, and the Vicksburg, Shreveport & Pacific to Rayville and the St. Louis, Iron Mountain & Southern beyond, via which the distance to Natchez is only 321 miles. The intermediate points on the Texas & Pacific to which the 20-cent rate is applied from Grand Saline are located on the portion of the line between Willow Glen and Addis and between Addis and Ferriday, inclusive. The distances from Grand Saline to these points range from 261 to 471 miles.

From Grand Saline to many of the above-mentioned intermediate points the distance is less than the short-line distance to Natchez. To such points a departure from the fourth section is not justified and the application is in this respect denied. The application is also denied as to all points on the main line of the Texas & Pacific to and including Addis, La., which is 361 miles distant from Grand Saline, for to none of these points is the distance sufficiently greater than the distance via the direct line to Natchez, especially upon consideration of the river transfer at Natchez, to warrant higher rates. To points on the branch line of the Texas & Pacific from Addis to Ferriday, however, defendants may charge higher rates than to Natchez, provided that the rates to intermediate points on the line of the Texas & Pacific Railway Company shall not exceed the lowest available combination and that the present rates to said intermediate points shall not be increased except as may hereafter be authorized by this Commission. The rates to these branch-line points appear to be appropriately graded. With the exceptions noted, all fourth

section relief prayed by carriers in respect to rates to and from Natchez involved herein is denied as to rates between Natchez and Texas points other than those included in the Houston-Galveston group.

The carriers herein representing the indirect lines between Natchez and points in Texas will be authorized to meet the rates made by the direct lines and to continue higher rates to intermediate points but not higher than the rates provided herein.

Appropriate orders will be entered.

52 I. C. C.

No. 4800.

SLOSS-SHEFFIELD STEEL &amp; IRON COMPANY ET AL.

v.

LOUISVILLE &amp; NASHVILLE RAILROAD COMPANY ET AL.

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Submitted March 3, 1919. Decided April 7, 1919.

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1. Upon further consideration of the record, *Held*; That rates on pig iron in carloads, from southern blast furnaces to Ohio River crossings and to certain points in central freight association territory were, between April 17, 1910, and October 1, 1914, unreasonable to the extent of 35 cents per long ton; that the rail-and-water rates to interior New England points between April 17, 1910, and June 25, 1918, were unreasonable to the extent that they exceeded rates based on \$4.50 per long ton from the Birmingham, Ala., district to Boston, Mass., or Providence, R. I., plus a handling charge of 40 cents per long ton, plus 75 per cent of the local rates beyond contemporaneously in effect; and that during the last-named period rail-and-water rates from other originating points concerned to interior New England points were unreasonable to the extent that they exceeded rates based on the established differential relationship to the rates from the Birmingham, Ala., district.
2. Reparation awarded.

Appearances same as before.

FIFTH SUPPLEMENTAL REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

The history of this proceeding is detailed in the Fourth Supplemental Report, 51 I. C. C., 635, and for the purposes of this report may be summarized as follows:

By complaint filed April 16, 1912, the rates on pig iron, in carloads, from southern blast furnaces to the Ohio River crossings and to points in central freight association, trunk line, and New England territories, published in Washburn's tariff I. C. C. 68, were alleged to be unreasonable and unjustly discriminatory. The establishment of just and reasonable rates for the future and reparation on shipments within the statutory period were asked. In the original report, made on June 1, 1914, 30 I. C. C., 597, we found that the all-rail rates from the Birmingham, Ala., district to representative Ohio River and central freight association territory points and the rail-and-water rate to Boston, Mass., were, and for the future would be, unreasonable to the extent of 35 cents per long ton; that the rail-and-water rates to interior New England points, taking Springfield

52 I. C. C.

and Lowell, Mass., and Portland, Me., as representative, were, and for the future would be, unreasonable to the extent of 75 cents per long ton to Springfield and Portland and 85 cents per long ton to Lowell; that like reductions should be made to other interior New England points; and that the then existing differentials between the southern furnaces and relation of rates to the Ohio River, to points in central freight association territory and to the east should be maintained. We made no specific finding as to the reasonableness of the rates in the past and denied reparation.

The original complaint named only a few representative carriers as defendants and the readjustment of rates effective October 1, 1914, pursuant to our order, included only destinations on the lines of carriers parties to the proceeding.

Upon supplemental complaint making all participating carriers parties defendant, and after further hearing, we found on July 22, 1915, that the rates to all points in central freight association territory on defendants' lines to which rates were not reduced on October 1, 1914, were, and for the future would be, unreasonable to the extent of 35 cents per long ton and awarded reparation to complainants and interveners on shipments made after that date upon which higher rates had been paid. 35 I. C. C., 460.

In the Third Supplemental Report, 46 I. C. C., 558, dealing with rates to trunk line and New England territories, the rates to trunk line territory and also the rail-and-water rate of \$4.60 per long ton to Boston, which had been found unreasonable in our original report, were held not to be unreasonable. The rail-and-water rates to interior New England points were found to be unreasonable to the extent that they exceeded rates based on \$4.50 per long ton to Boston or to Providence, R. I., plus a handling charge of 40 cents per long ton, plus 75 per cent of the local rates beyond. The effective date of our order entered in accordance with these findings was extended from November 1, 1917, to May 1, 1918, to permit an increase of the rates prescribed by the amounts authorized in the *Fifteen Per Cent Case*, 45 I. C. C., 303, and thereafter by order of April 20, 1918, it was again postponed until our further order because of the increased rates provided in General Order No. 28 issued by the Director General of Railroads.

The Fourth Supplemental Report, 51 I. C. C., 635, dealt with a supplemental complaint filed on July 22, 1915, praying reconsideration of our denial of reparation in the original report and asking reparation on all shipments included in the statutory period of two years preceding the filing of the original complaint and on all subsequent shipments. We held that complainants were entitled to a finding as to the reasonableness of the rates in the past, afforded the parties

opportunity to apply within 30 days for a further hearing upon that issue, and stated that failing such request we would determine the question upon the record already made.

A further hearing was not requested, and therefore we have no new or additional evidence to consider. The questions to be determined herein are: (1) Were the all-rail rates from the originating points concerned to the Ohio River crossings and to points in central freight association territory, and the rail-and-water rates to interior New England points, reached by defendants' lines, and to which rates were published in Washburn's tariff I. C. C. 68, unreasonable during the whole or any part of the two years prior to April 16, 1912, when the original complaint was filed, and thereafter until the reduced rates prescribed by us became effective? (2) if so, to what extent were they unreasonable? and (3) should reparation be awarded?

The principles which control our determination of these questions and the principal facts and contentions which it is necessary to consider are set forth in the previous reports in this proceeding and need not be restated. It is sufficient to say that the record shows in detail the circumstances and conditions surrounding the traffic for many years prior to the filing of the complaint, as well as subsequently, and particularly those obtaining from April, 1907, when the rates complained of were established, to May, 1915, when the hearings were concluded. The record embraces voluminous evidence concerning the commercial conditions affecting the production and marketing of pig iron and the history of the rates attacked; comparisons with rates on pig iron and other commodities applying in the same territory and in other localities, supplemented by statements of fact showing the similarity or dissimilarity of the transportation conditions affecting such rates; statistical data pertaining to the cost of transportation of pig iron between representative points; evidence as to the volume of the traffic and the physical conditions surrounding its transportation; and evidence showing the financial results from the operation of the lines of representative carriers defendant. Throughout the entire period covered by the complaint there were no important variations in the rates, and the record shows that there were no substantial changes in the circumstances and conditions affecting the service or cost of transporting pig iron, except perhaps a lessened volume of movement to the north and east and a gradual increase in the general operating expenses of the carriers as compared with their operating revenues.

Upon further consideration of all the facts of record we conclude and find that during the period from April 17, 1910, to October 1, 1914, the rates on pig iron in carloads from points in Alabama and Tennessee to the Ohio River crossings and to points in central freight association territory, covered by the complaint as amended, were un-

52 I. C. C.

reasonable to the extent that they exceeded the rates to such points found reasonable for the future in our reports in 30 I. C. C., 597, and 35 I. C. C., 460, in which, as stated, we found said rates to be unreasonable to the extent of 35 cents per long ton; that during the period from April 17, 1910, to June 25, 1918, the rail-and-water rates from the Birmingham, Ala., district to interior New England points, covered by the complaint as amended, were unreasonable to the extent that they exceeded rates based on \$4.50 per long ton to Boston, Mass., or Providence, R. I., plus a handling charge of 40 cents per long ton, plus 75 per cent of the local rates contemporaneously in effect beyond, but allowing any increase in the total rate so made that the carriers were entitled to under the *Fifteen Per Cent Case*, 45 I. C. C., 303; and that from the other originating points to interior New England points the rail-and-water rates were unreasonable to the extent that they exceeded rates based on the established differential relationship to the rates from the Birmingham, Ala., district herein found reasonable. The rates authorized in General Order No. 28 issued by the Director General of Railroads are not in issue and hence are not considered.

We further conclude and find that complainants and interveners who made shipments during the periods stated from and to the points in question that are not barred by the statute of limitations, upon which higher rates were charged than are herein found to have been reasonable, and who paid and bore the transportation charges thereon, have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found to have been reasonable; and that they are entitled to reparation with interest. The exact amount of reparation can not be determined upon the present record and complainants and interveners should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, specifying the dates upon which the charges were paid, and submit same to the defendants for verification. Upon receipt of a statement or statements so prepared and verified we will consider the entry of an order awarding reparation.

As already indicated, many carriers participating in the transportation of the shipments were not parties defendant to the original complaint, but such carriers may join in the payment of reparation.

No. 10264.

## LANIER BROTHERS

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,  
DIRECTOR GENERAL, ET AL.

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*Submitted January 7, 1919. Decided April 5, 1919.*

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Rate charged on cottonseed feed meal, in carloads, from Birmingham, Ala., to Nashville, Tenn., found to have been legally applicable and not shown to have been unreasonable. Complainants not shown to have been damaged by the alleged discrimination. Complaint dismissed.

*T. M. Henderson* for complainants.

*William Burger* for defendants.

## REPORT OF THE COMMISSION.

## DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

By complaint filed September 25, 1918, complainants, copartners under the firm name of Lanier Brothers, allege that the rate charged on six carloads of cottonseed feed meal shipped from Birmingham, Ala., to Nashville, Tenn., during January, February, and March, 1918, was illegal, unreasonable, and unduly prejudicial. Reparation only is asked.

The shipments, consisting of cottonseed meal mixed or blended with approximately an equal weight of ground cottonseed hulls, were billed either as "cottonseed feed meal," "Magico C. S. Feed," "feed cottonseed meal—20%," or as "cottonseed meal—20%." All of them were shipped under bills of lading which showed authority of a United States Food Administration license. Charges were assessed at the class D rate of 13 cents per 100 pounds applicable under the governing southern classification to "animal or poultry food, mixed or compounded, without animal products, not otherwise indexed by name." Complainants contend that the commodity was merely a low-grade cottonseed meal, and that the rate legally applicable was a commodity rate of \$1.65 per net ton which contemporaneously applied from Birmingham to Nashville on—

Cottonseed meal and cottonseed cake, in straight or mixed carloads, or when mixed with cottonseed hulls, carload minimum weight 15 net tons. \* \* \*  
Cottonseed hulls, straight carloads, minimum weight 12 net tons.

52 I. C. C.

Cottonseed meal is said to be too concentrated for use as animal food, except when mixed with hulls or some other similar ingredient, but because of the ammonia content it is used extensively as a fertilizer. While the meal contains some hulls, the proportion is slight, as the hulls are extracted as far as possible in the milling process. When hulls are added to the meal the per cent of ammonia in the resulting mixture decreases. It was testified for complainants that commercially both the meal proper and the mixture are known as meal and distinguished by percentage designation of the ammonia or protein content, and that the shipments in question contained 4 per cent ammonia or 20 per cent protein, as distinguished from approximately 8 per cent ammonia contained in the meal proper; also that the description employed in the billing was used because under the Tennessee statutes a mixture containing no more than 4 per cent ammonia must be labeled in appropriate manner to show its grade as a fertilizer. It is to be noted, however, that some of the descriptions given for the shipments by the consignor afford no indication as to the ammonia content. As described in the shipping bills those shipments were clearly feed. It is not suggested that any of the shipments were intended for, or considered as, fertilizer. The value of such a mixture is stated to be about \$40 per net ton and of the meal proper \$55 per net ton. We think that the commodity had lost its identity as cottonseed meal within the meaning of the tariff and was not entitled to the rate on meal.

Complainants further contend that the commodity rate was applicable because the tariff authorized a mixture of meal and hulls. It did not, however, authorize shipments under any other name or representation than meal and hulls. Defendants urge that this commodity description contemplated mixed carloads of meal and hulls in separate packages and not a mixture of those articles in the same package. This contention is devoid of merit. They contend that in any event it did not provide for mixing meal with hull bran, or ground hulls, which are named as a separate item in the southern classification. This contention also lacks merit. The rate on the mixed carloads was a commodity rate, the establishment of which removed the articles from the classification between the points covered by the commodity rate. The commodity rate was not conditioned in any way upon the degree of fineness to which the meal or the hulls had been ground. If defendants inspected the shipments at the time of movement it is to be assumed that the inspection verified the description given by the shipper. Manifestly it is now impossible for them to inspect the shipments. However, upon all the facts we find that these shipments as described by the shippers were properly subject to the class D rate. *Ford Co. v. M. C. R. R. Co.*, 19 I. C. C., 507.



Effective November 10, 1918, the tariff was amended to provide for the application of the rate on cottonseed meal to cottonseed meal and ground cottonseed hulls mixed.

No evidence was offered as to the inherent unreasonableness of the rate assailed, complainants relying upon the lower rate contemporaneously maintained on the meal. Defendants show that the rate charged compares favorably with the level of the class D rates between numerous other points and with the rate of 15 cents per 100 pounds applicable on cottonseed cake, meal, and hulls, in carloads, for 205 miles, the distance from Birmingham to Nashville, under the scale prescribed in *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co.*, 39 I. C. C., 497.

We find that the rate assailed is not shown to have been unreasonable. Any undue prejudice which may have existed has been removed, and there is no proof of damage to complainants by reason of the alleged unlawful discrimination.

An order dismissing the complaint will be entered

52 I. C. C.

No. 6815.

ROCK HILL BUGGY COMPANY, INCORPORATED,

v.

SOUTHERN RAILWAY COMPANY ET AL.

## PORTIONS OF FOURTH SECTION APPLICATIONS

Nos. 1548 AND 1782.

*Submitted January 2, 1915. Decided March 28, 1919.*

1. Rates on vehicle parts from certain points in trunk line and New England territories to Rock Hill, S. C., not shown to have been unduly prejudicial, but found to have been unreasonable to the extent that they exceeded the aggregates of the intermediate rates contemporaneously in effect on like traffic from and to the same points.
2. Rates on vehicle parts from certain points in central freight association territory and from certain Ohio River crossings to Rock Hill not found to have been unreasonable, but found to have been unduly prejudicial.
3. Special iron rates from Cincinnati and Cleveland, Ohio, to Rock Hill not shown to have been unreasonable or unduly prejudicial.
4. Rates on bar iron, carloads, from Pittsburgh, Pa., and on carriage dashes, any quantity, from Buffalo, N. Y., to Rock Hill not found to have been unreasonable or unduly prejudicial.
5. Rates on vehicle wheels, carloads, from Oxford, N. C., to Rock Hill found to have been unreasonable.
6. Reparation denied for want of proof that complainant was damaged. Present rates were initiated by the Director General of Railroads, who is not a party defendant. Complaint dismissed.
7. Fourth section relief denied.

*Warren S. Watts and M. Maxwell Caskie for complainant.**R. Walton Moore, Charles J. Rixey, Jr., and Willis H. Fowle, for defendants.*

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

## BY DIVISION 3:

In this complaint filed April 17, 1914, it is alleged that the defendants' carload and less-than-carload rates on vehicle parts and materials to Rock Hill, S. C., from points in Connecticut, Massachusetts, New York, New Jersey, Pennsylvania, Maryland, West Virginia, Ohio, Illinois, Indiana, Michigan, and Missouri, and from Memphis 52 I. C. C.

and Tullahoma, Tenn., and Oxford, N. C., were and are unreasonable, unduly prejudicial, and in violation of section 4 of the act. Reparation and the establishment of reasonable and nonprejudicial rates are asked. Rates are stated in amounts per 100 pounds and, except as otherwise noted, are those in effect prior to June 25, 1918, on which date they were increased pursuant to General Order No. 28 issued by the Director General of Railroads.

Rock Hill is on the main line of the Southern Railway, 25 miles south of Charlotte, N. C., and about 15 miles from the North Carolina-South Carolina state line. The articles shipped consisted of springs and axles; joints, rails, and sockets; wheels in the white, with or without tires; shafts in the white; bar iron or steel tires, bolts and nuts; vehicle forgings, malleable iron castings; fifth wheels; poles and shafts in the white, ironed; dashes; carriage cloth; rubber goods; leather; hardware; and buckrams. The output of complainant's factory is sold in the Carolinas and the southeast where it comes in competition with vehicles, particularly buggies, manufactured at various points in Virginia, North Carolina, and Georgia. The grade of vehicles manufactured at these points, including Rock Hill, is practically the same, and they are sold in the same markets for approximately the same price.

Class rates are applicable to all of the above articles, except those included in what is known as the special iron list, and bar-iron shipments from Pittsburgh, Pa. Joint class rates applied to Rock Hill from points in trunk line and New England territories, hereinafter referred to as the east, from various Ohio and Mississippi River crossings, hereinafter termed the river crossings, and from the Buffalo-Pittsburgh territory. From points in central freight association territory, hereinafter referred to as the west, through rates to Rock Hill were based on the Ohio River or the Virginia cities.

For the purposes of this case it will be sufficient to deal with rates from one representative point in each of the designated territories of origin.

Complainant particularly stresses the spread between the rates to Charlotte and Monroe, N. C., and those to Rock Hill. While there is no competitor located at Charlotte, that point is relied upon strongly for comparative purposes. There is, however, an active competitor at Monroe, a point approximately 30 miles east of Rock Hill. As the same rates apply to both Charlotte and Monroe references to Charlotte will be understood to include Monroe.

Complainant introduced numerous exhibits of rates on these commodities from the respective points of origin to competitive points in Virginia and North Carolina as compared with the rates to Rock Hill. The components upon which the rates assailed were based were the

first, second, fourth, fifth, and sixth class rates, and certain special iron rates. Complainant is not, however, seeking a reduction in the class rates as such. The special iron rates will be considered separately.

RATES FROM THE EAST.

The following table illustrates the situation with respect to traffic from the east on the date of the hearing.

*Rates in cents per 100 pounds.*

From Wilkes-Barre, Pa., to—	Miles.	Classes.				
		1	2	4	5	6
Charlotte.....	622	103	90	61	52	41
Monroe.....	646	103	90	61	52	41
Rock Hill.....	647	115	102	73	59	48
Difference.....		12	12	12	7	7

Complainant argues that the slight difference in distance does not justify the difference in the rates and that the rates to Rock Hill are therefore unreasonable and not properly aligned with the Charlotte rates. It is insisted that the spread should be no greater than amounts based on the same ton-mile earnings as accrue from the rates to Charlotte.

Complainant shows that the through rates to Rock Hill exceeded the aggregates of the intermediate rates to and from Norfolk, Va., on the following commodities and in the following amounts: Carriage cloth and rubber goods, any quantity, from New York, N. Y., and Trenton, N. J., 3 cents; leather, carloads and less than carloads, from Newark, N. J., 3 and 5 cents, respectively; hardware, n. o. s., any quantity, from New York, 5 cents; vehicle springs, carloads and less than carloads, from Philadelphia, Pa., 15 and 27 cents, respectively; and carriage and buggy axles, carloads, from Philadelphia, 15 cents. Some of these departures, all of which were protected by appropriate fourth section applications heard with this case, have been removed.

It is also contended that the through rates from other points in the east are unreasonable to the extent that they exceed the combination of rates to Virginia cities and certain commodity rates to Rock Hill. It appears, however, that the commodity rates apply only as proportional rates on traffic originating in the west and can not be used as intermediate rates on traffic originating in the east.

Regarding the joint rates which exceeded the combination of rates to and from Norfolk, the same contentions were made for the de-  
52 I. C. C.

fendants as in *Spartanburg Chamber of Commerce v. S. Ry. Co.*, 34 I. C. C., 484, hereinafter termed the *Spartanburg Case*, wherein we held that if the carrier participating in joint rates from eastern seaboard territory to the southeast elected to meet the rates of the water lines to Norfolk the rates so made should be the lawful factors in making up the aggregates of the intermediate rates, and denied fourth section relief. No reason appears for a different conclusion in this case.

Numerous comparisons were made for the defendants of rates on the various commodities concerned to Rock Hill with rates on the same commodities to points in North Carolina, South Carolina, and Georgia from the east and also from certain Illinois, Indiana, and Louisiana points.

In the *Spartanburg Case* class and commodity rates from the east and west to Spartanburg, S. C., were assailed as unreasonable and unjustly discriminatory. Spartanburg is in the northwest portion of South Carolina, 76 miles southwest of Charlotte, which latter point was alleged to be unduly preferred. We found the rates from the east to Spartanburg to be unjustly discriminatory in so far as they exceeded the rates to Charlotte by more than the rates to Spartanburg from the Virginia cities exceeded the rates to Charlotte. The spread between the rates from the east to Charlotte and those to Rock Hill on the various commodities here concerned was at the time of the hearing the same as from the Virginia cities. On January 1, 1916, the several class rates from the east to Spartanburg were made the same as to Charlotte. Rates to Rock Hill were contemporaneously adjusted to the level of the Charlotte rates, placing complainant on a parity with its nearest competitor.

Following the reasoning in the *Spartanburg Case*, *supra*, we find that the rates from the east in effect just prior to June 25, 1918, were not unduly prejudicial but were unreasonable to the extent that they exceeded the aggregates of the intermediate rates contemporaneously in effect on like traffic from and to the points involved.

#### RATES FROM THE WEST.

There are no joint rates from the west to Rock Hill, through rates being constructed either on the Ohio River crossings or the Virginia cities. With respect to this traffic Rock Hill is situated in what is known as the Spartanburg group, which in general may be described as extending from the North Carolina state line to within a few miles of Augusta, Ga., on the south, and from Lancaster and Columbia, on the east, to Anderson, Seneca, and Walhalla, on the west. Through

52 I. C. C.

the Virginia cities the distance to Rock Hill is 25 miles greater than to Charlotte and approximately the same as to Monroe.

Prior to the filing of this complaint proportional rates equal to the full local rates constituted the factors from the Virginia cities to Charlotte and Rock Hill. On June 20, 1914, the proportional rates to North Carolina points, including Charlotte, were materially reduced. On July 20, 1914, the proportional rates to Rock Hill were reduced on the first and second classes and increased on the last three classes. The following table shows the proportional rate relationship at the time of the hearing:

*Rates in cents per 100 pounds.*

From the Virginia cities to—	Classes.				
	1	2	4	5	6
Rock Hill.....	73	66	53	44	34
Charlotte.....	57	50	32	27	21
Difference.....	16	16	21	17	13

Complainant insisted that proportional rates more closely aligned to the Charlotte rates should apply on traffic to Rock Hill. Using Lynchburg as representative of the Virginia cities, complainant shows that the above-stated proportional rates to Charlotte for 205 miles yield ton-mile earnings in cents as follows: 5.56, 4.878, 3.12, 2.634, and 2.048, respectively, and to Rock Hill, 230 miles, 6.35, 5.74, 4.61, 3.83, and 2.96, respectively. Using the ton-mile earnings accruing from the rates to Charlotte as a basis for computing rates to Rock Hill, complainant contended that the latter rates from the Virginia cities should not exceed on the various classes 64, 56, 36, 30, and 23 cents, respectively.

It is contended for defendants that the rates to the North Carolina points are extremely low and the outcome of a compromise with North Carolina state authorities, more particularly described in *Rates to North Carolina Points*, 29 I. C. C., 550, and in no sense should be a measure of the rates to Rock Hill. It is asserted on their behalf that the competitive conditions at Atlanta, Ga., are as intense as at any point in the southeast and that the rates to Atlanta compared with rates to Rock Hill demonstrate the latter to be reasonable. The following is illustrative:

52 I. C. C.

Rates in cents per 100 pounds.

To—	From Kalamazoo, Mich.					From Cleveland, Ohio.				
	Miles.	Carriage springs.		Carriage axles.		Miles.	Hardware.		Vehicle forgings.	
		C. L.	L. C. L.	C. L.	L. C. L.		C. L.	L. C. L.	C. L.	L. C. L.
Rock Hill, S. C.....	808	48	73	48	58.5	792	90	101.5	41	71
Atlanta, Ga.....	734	56	88	53	69	718	102	110	51	124
Hickory, N. C.....	752	56	85	56	67	736	94	105.5	43	73
Sumter, S. C.....	875	48	73	48	58.5	859	90	101.5	42	72

Where through rates are constructed by combination on the Virginia cities, the rates from points of origin to the Virginia cities are the same whether shipments are destined to Rock Hill, Charlotte, or Monroe. The proportional rates from the Virginia cities to Charlotte were less than the respective local rates on the classes involved by 11, 8, 6, 6, and 4 cents, respectively. To Rock Hill the proportional rates were less than the local rates by 7 cents on first class and 4 cents on second class, and greater than the local rates by 3 cents on fourth class, 4 cents fifth class, and 2 cents sixth class. The differences in the local rates on the respective classes were, at the time of the hearing, 12, 12, 12, 7, and 7 cents, while the differences in the proportional rates were 16, 16, 21, 17, and 13 cents. The basis in effect prior to June 20, 1914, appears to have been satisfactory to complainant. We do not find that prior to June 25, 1918, the through rates in effect from the west which based on the Virginia cities were unreasonable, but find that they were unduly prejudicial to complainant to the extent that the factors south of the Virginia cities to Rock Hill on the commodities involved, which moved under the first, second, fourth, fifth, and sixth class rates, exceeded by more than 12, 12, 12, 7, and 7 cents, respectively, the factors contemporaneously applied on like traffic to Charlotte and Monroe.

On traffic to Rock Hill from the west through the river crossings and Asheville, N. C., rates are made by combinations on those crossings. This is also true as to other points in the Spartanburg group. The reasonableness and propriety of rates to Spartanburg via these routes were before us in the *Spartanburg Case*, and we found that Spartanburg was entitled to the advantages of its location via short lines from the west, and that on traffic moving through the river crossings and Asheville the rates were unjustly discriminatory to Spartanburg in so far as they exceeded rates contemporaneously maintained to Charlotte. On November 1, 1915, the effective date of our order in the *Spartanburg Case*, with respect to the routes through the Ohio River crossings and Asheville, was postponed

52 I. C. C.

pending our decision in a fourth section proceeding involving rates on classes and commodities from Ohio River crossings to points in North Carolina, which proceeding is still under consideration. With respect to location and distances from the west via the routes just referred to, Rock Hill is so related to Spartanburg that the adjustment to be made to the latter point will of course affect Rock Hill. No finding will therefore be made at this time regarding the rates through Asheville.

#### RATES FROM RIVER CROSSINGS.

The joint rates from these crossings through the Virginia cities are governed by the southern classification and are either the same as or arbitraries over or under Cincinnati, Ohio; therefore that point fairly illustrates the situation. The rates from Cincinnati to Carolina territory are made in the following manner: The local rates from Chicago, Ill., to Cincinnati are subtracted from the local rates from Chicago to the Virginia cities. The remainders form a set of proportional rates from Cincinnati applicable on business to the Carolinas. On the articles concerned those proportionals as represented by the numbered classes, exclusive of third, were 32, 28, 15, 12, and 10 cents, respectively. To these proportional rates were added the rates from the Virginia cities to destinations in the Carolinas, and the sums of the two factors constituted the joint rates.

The factors south of the Virginia cities used in constructing the joint rates from Cincinnati to Charlotte and Rock Hill were the same proportional rates as were used in making the through combination rates from the west, and the spread was therefore identical. The circumstances surrounding traffic from Cincinnati and other Ohio River crossings warrant a finding corresponding to that heretofore announced with respect to rates from the west. We do not find that the joint rates in effect prior to June 25, 1918, from the river crossings applying through the Virginia cities on the commodities involved, which move under the first, second, fourth, fifth, and sixth classes, governed by the southern classification, were unreasonable, but find that they were unduly prejudicial to complainant to the extent that they exceeded the rates contemporaneously in effect to Charlotte and Monroe by more than the amounts stated in our finding respecting rates from the west. No finding will be made at this time regarding the rates through Asheville for the reasons given in disposing of the rates from the west.

#### SPECIAL IRON RATES.

From Cincinnati to Rock Hill, Charlotte, and other points in that territory joint special iron rates were published. Complainant re-



ceived shipments of bolts, nuts, and vehicle forgings from Cincinnati on which such rates applied in carload and less-than-carload quantities. At the time of the hearing the special iron rates from Cincinnati were: To Rock Hill, 31 cents, and to Charlotte, 25 cents. Complainant also received bolts, nuts, and vehicle forgings from Cleveland, from which point rates are made by combination of the class rates to the Ohio River crossings or the Virginia cities, according to the gateway used, and the special iron rates beyond to Rock Hill. The class rate factor is the same whether the traffic is destined to Rock Hill or Charlotte. The rates from Cincinnati are shown above. At the time of the hearing the special iron rates from the Virginia cities were: To Rock Hill, 22 cents, and to Charlotte, 15 cents. Practically no evidence was adduced regarding the measure or propriety of these rates, and we find that they are not shown to have been unreasonable or unduly prejudicial.

#### RATES FROM PITTSBURGH, PA., AND BUFFALO, N. Y.

From Pittsburgh to Charlotte and Rock Hill commodity rates were published on bar iron, in carloads. Complainant did not receive bar iron in less-than-carload quantities. At the time of the hearing the carload rates were: To Charlotte, 33.5 cents; to Rock Hill, 36.5 cents, a spread of 3 cents. The rates in effect just prior to June 25, 1918 were: To Charlotte, 34.5 cents; to Rock Hill, 37.5 cents. We do not find that these rates were unreasonable or unduly prejudicial.

Complainant received certain shipments of carriage dashes from Buffalo on which the first-class any-quantity rate of \$1.28 applied. The rate to Charlotte was \$1.16, or 12 cents less. The rates in effect prior to June 25, 1918, were: To Rock Hill, \$1.30; to Charlotte, \$1.18. With respect to traffic from the west to Rock Hill we have hereinabove found that the rates on articles rated first class should not have exceeded the Charlotte rates by more than 12 cents.

We do not find that the rates on carriage dashes from Buffalo to Rock Hill were unreasonable or unduly prejudicial.

#### RATES FROM OXFORD.

The carload rate from Oxford to Rock Hill on vehicle wheels, with tires, minimum 20,000 pounds, was 40 cents; without tires, minimum 12,000 pounds, 50 cents. To Atlanta and certain other points the rate was 37 cents, minimum 24,000 pounds on wheels without tires in straight carloads, or with or without tires in mixed carloads, and 18,000 pounds on wheels without tires in straight carloads. Complainant is chiefly concerned with the carload rate on

wheels, without tires, which took fourth class to Rock Hill and a commodity rate to Atlanta. From Oxford Rock Hill is intermediate to Atlanta, and the rate to the latter point was published subject to rule 77 of Tariff Circular 18-A.

We find that the rates assailed on vehicle wheels were unreasonable to the extent that they exceeded the rates contemporaneously in effect on like traffic from Oxford to Atlanta.

**RATES FROM MEMPHIS AND TULLAHOMA.**

The joint class rate on buggy shafts, carloads, from Memphis to Rock Hill was 44 cents, and to Charlotte and Monroe, 37 cents. From Tullahoma, a point on the Nashville, Chattanooga & St. Louis Railway, 82 miles from Chattanooga, Tenn., the rates were 39 and 32 cents, respectively. No evidence tending to show that these rates were unreasonable or unduly prejudicial was offered and we find, therefore, that they are not shown to have been unreasonable or unduly prejudicial.

Complaint was made with respect to water-and-rail rates from the east to Rock Hill. It does not appear that the complainant makes shipments over such routes, and no evidence was introduced with regard to these rates. They will not therefore be considered.

Reparation is prayed on all shipments which moved within the statutory period. In some instances complainant purchased shipments delivered at destination, others f. o. b. point of origin, and in many instances it bore only part of the freight charges. The record does not present the evidence necessary to a finding of specific damage due to the unduly prejudicial rates. The only rates found unreasonable are those from certain points in the east which exceeded the aggregates of the intermediate rates, and the rates on vehicle wheels, in carloads, from Oxford to Rock Hill. It does not appear that complainant bore the freight charges on shipments moving under those rates, and no award of reparation can therefore be made.

The Director General of Railroads, in exercise of powers conferred upon the President by the federal control act, has initiated rates which exceed those assailed. These increased rates are not in issue and the Director General has not been made a party defendant. Upon the present pleadings the rates so increased are not subject to review in this proceeding. The complaint will therefore be dismissed.

There were heard with this case that portion of Fourth Section Application No. 1548, filed by the Southern Railway Company, wherein authority is sought to continue rates on buggy wheels from Oxford to Atlanta, East Point, Griffin, Jackson, Newnan, and

Barnesville, Ga., which are lower than rates contemporaneously applicable on like traffic to Rock Hill and other intermediate points; also such portions of the same application, together with No. 1782 filed by C. C. McCain, agent, wherein authority is sought to continue rates on the following commodities from the following points to Rock Hill, which are higher than the aggregates of the intermediate rates to and from the Virginia cities: Springs and axles from Wilkes-Barre, Monongahela, Scranton, and Philadelphia, Pa.; Cincinnati; Kalamazoo; and Wheeling, W. Va.; bolts, nuts, and vehicle forgings from Plantersville, Conn.; Auburn, N. Y.; Cincinnati; and Northumberland, Pa.; bar iron and steel tires from Johnstown and Pittsburgh, Pa.; fifth wheels from Cincinnati; Mechanicsburg, Pa.; and Auburn; carriage cloth and hardware from New York; rubber goods from Trenton and New York; and leather from Newark, and Williamsport, Md.

No justification was offered for these departures, and the fourth section relief asked will be denied.

Appropriate orders will be entered. .

52 I. C. C.

No. 7643.

## CHANUTE REFINING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted August 1, 1917. Decided April 4, 1919.*

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Upon complaint that the charges on new empty tank cars on their own wheels from Milton, Pa., and North St. Louis, Mo., to Chanute, Kans., and Cushing, Okla., and a tariff rule providing that new or newly acquired tank cars, moved empty to home or loading point, must be billed at regular tariff rates, were unreasonable, unjustly discriminatory, and unduly prejudicial; *Held*, That the allegations have not been sustained. Complaint dismissed.

*C. D. Chamberlain* for complainant.

*F. E. Andrews, W. W. Miller, T. J. Norton, and Robert Dunlap* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

BY DIVISION 3:

In this complaint, filed January 5, 1915, as amended, it is alleged that the charges collected by the defendants on various empty tank cars moving on their own wheels shipped from Milton, Pa., and North St. Louis, Mo., to Chanute, Kans., and Cushing, Okla., between August 9, 1912, and February 8, 1915, inclusive, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation and the establishment of reasonable rates and regulations are asked. As the Director General of Railroads has not been made a party defendant, our discussion and findings herein will be confined to the rates and rules in effect prior to June 25, 1918, on which date the rates were increased.

Complainant secures its crude oil at Cushing, refines it at Chanute, and ships it in tank cars, the majority of which are owned by complainant, to various points throughout the United States. The cars in question were new cars purchased by complainant from manufacturers at Milton and Sharon, Pa. Those constructed at Milton were purchased f. o. b. that point; those constructed at Sharon f. o. b. North St. Louis. The cars from Milton, 121 in number, were shipped to Chanute and moved over either the Pennsylvania lines or Philadelphia & Reading Railway in connection with other

defendants named to East Galesburg, Ill., and beyond over either the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, all the way, or in connection with certain other defendants. The cars purchased f. o. b. North St. Louis moved from that point to Chanute and Cushing via the Missouri, Kansas & Texas Railway.

Rule 29 of the official classification, which governed, provided as follows:

(Sec. 1). In providing ratings in this classification for articles in tank cars, the carriers whose tariffs are governed by this classification do not assume any obligation to furnish tank cars. When tank cars are furnished by shippers or owners, mileage at the rate of three-quarters ( $\frac{3}{4}$ ) of one cent per mile will be allowed for the use of such tank cars, loaded or empty, providing the cars are properly equipped. No mileage will be allowed on cars switched at terminals nor for movement of cars under empty freight-car tariffs.

(Sec. 2). Private tank cars will be moved empty, without charge, at the time movement is made between stations or junction points on the lines of carriers whose tariffs are governed by this classification (either individually or jointly), including delivery to connecting lines subject to the following conditions:

(a) Should the aggregate empty mileage of any owner's cars on June 30 of each year, or at the close of any such yearly period as may be mutually agreed upon, exceed the aggregate loaded mileage on the lines of such carriers individually (or jointly when mileage accounts are computed jointly), such excess must be paid for by the owner, either by an equivalent loaded mileage during the succeeding six months, or, at tariff rates without minimum, plus the mileage that has been paid by the carriers to the owners on such excess empty mileage. Any excess of loaded mileage over empty mileage of any owner's cars at the end of the accounting period will be continued as a credit against the empty movement of such cars for the ensuing twelve months.

(b) New cars or newly acquired cars, moved empty to home or loading point by order of the owner, must be billed at regular tariff rates.

Practically the same provisions were carried in the western classification.

At the time of movement the official classification provided a charge of 4 cents per car per mile, minimum 100 miles, on new or newly acquired cars moved empty on own wheels to home or loading point. This charge was subsequently increased to 4.2 cents per car per mile following *The Five Per Cent Case*, 32 I. C. C., 325. The western classification provided a charge of 10 cents per car per mile, minimum \$5 per car, applicable on such cars. Charges were assessed on all of the cars from Milton to Chanute, except on 15 which moved in July, 1913, in the sum of \$63.62 per car, based on the following combination rates: 4 cents per car per mile to East Galesburg; a commodity rate of \$17.50 per car from East Galesburg to Kansas City, Mo.; and 10 cents per car per mile beyond. On the 15 excepted cars the charges were \$64.16 per car. This discrepancy is not explained. The official classification provided that the distance rate named on tank cars should be computed on basis of the shortest workable dis-

tance. Charges were assessed on each of the cars from North St. Louis to Cushing and Chanute in the sums of \$45.50 and \$30.20, respectively, based on a commodity rate of \$17.50 from East St. Louis to Kansas City and 10 cents per car per mile beyond.

Complainant does not attack the inherent reasonableness of the 4-cent rate charged to East Galesburg, which was applicable throughout the official classification territory. Its contentions are that paragraph (b) of rule 29, above quoted, and the corresponding rule in the western classification were unreasonable and unjustly discriminatory in that new or newly acquired cars were treated differently from cars in service; and that the charges collected on the cars in question were unreasonable to the extent that the components west of the Mississippi River exceeded 4 cents per car per mile.

It is insisted that new empty tank cars or newly acquired tank cars should be transported without any charge; and that in both official and western classification territories the distance these cars travel to home or loading point before being put into actual service should be charged to the owner's empty-mileage account the same as cars in service. It is argued that from a transportation standpoint it costs the carriers no more to haul new tank cars to home or loading point than it would were the cars already in service, and that, therefore, the distance such cars travel in moving to home or loading point should be charged to the owner's empty-mileage account to be offset against a future loaded movement.

The theory of paying allowance for empty movement presupposes a loaded movement. While the equalization rule has been gradually broadened so that the loaded mileage accruing during a designated period on the entire line of the carrier individually, or jointly when mileage accounts are computed jointly, may be offset against the empty mileage, it never contemplated paying mileage on new or newly acquired empty tank cars before they are put into actual service and such movements have always been treated like any other freight. The evidence shows that under the present equalization rule complainant has had at the end of practically every accounting period an excess of loaded movement over empty movement, and complainant states that this condition is likely to continue. The practical effect, therefore, of granting complainant's demands would be that the carriers receiving a substantial loaded haul would receive nothing for the movement of new empty equipment, but, on the contrary, would be required to pay three-fourths of a cent per mile for the distance the new cars were hauled by them.

It is often possible for a purchaser of new tank cars to secure loading for such cars either at the point of origin or at some point

intermediate to the home point. This, of course, puts the cars in service. Complainant's witnesses testified that it often availed itself of such loading and that the carriers' agents generally assisted in securing the same, but it was unable to secure loading for the cars under consideration because of their large number. Complainant argues that because it might sometimes happen that a competitor who purchases new cars in the east could load them while complainant could not, and would thus secure a lower transportation charge than complainant, the rule is unduly prejudicial. The rule is open to all shippers alike, and there is nothing to show that any shipper has received any undue advantage over complainant.

Complainant also contends that the rule is conducive to discriminatory practices. While certain hypothetical cases were recited which might result in discrimination as between shippers in tank cars, no facts were offered to show that complainant has suffered thereby. The meager facts of record do not warrant a condemnation of a rule of such universal application as that here in question, and we accordingly find that the rule is not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial.

In support of its allegations that the charges collected were unreasonable, unjustly discriminatory, and unduly prejudicial, complainant introduced an exhibit showing that from Chicago, Ill., to Chanute and Cushing; from Chicago and St. Louis to Kansas City, Mo., Omaha, Nebr., Sioux City, and Sioux Falls, Iowa, Texas, Colorado, and Utah common points; and from Memphis, Tenn., to Kansas City and Omaha, the rates on empty tank cars yielded earnings per car-mile ranging from 4.2 to 7.6 cents. The \$17.50 commodity rate applicable between the Mississippi and Missouri rivers and charged complainant applied generally on empty box and tank cars in that territory. For the defendants it was stated that this was a low rate, forced by competition of the carriers between the rivers, and was extended back to apply from East Galesburg, the rate-breaking point between official and western classification territories. The short-line distance between the rivers by way of the Wabash Railroad from Hannibal, Mo., to Kansas City is 198 miles. The \$17.50 rate for that distance yielded a per car-mile revenue of 8.83 cents. The distance over the Santa Fe from East Galesburg to Kansas City is 280 miles, for which distance the \$17.50 rate yielded 6.2 cents per car-mile. The distance from St. Louis to Kansas City by way of the Missouri, Kansas & Texas Railway is 374 miles. For the defendants the per-car earnings between the rivers were compared with per-car earnings ranging from \$37.50 to \$79.20 on various low-grade commodities, such as brick, asphalt, lumber, sand, scrap iron, broken glass, machinery, and iron and steel articles.

It was stated on behalf of the defendants that the 10-cent rate charged beyond Kansas City applied generally throughout western classification territory except where competitive conditions have forced a lower rate not only on empty tank cars but also on the railway equipment of other carriers.

Defendants' justification for a higher rate in western classification territory than in official classification territory was the lower density of traffic and the more expensive operating conditions. No evidence was offered by complainant to show that the through charges as a whole were unreasonable, unjustly discriminatory, or unduly prejudicial.

An examination of tariffs on file with us shows extreme and unaccountable variations in rules and rates governing transportation of cars on their own wheels in the three classification territories. It is clear that these rules and rates are much in need of revision. The record in this case, dealing only with rates on cars moving between specified points, does not afford a foundation for a review of this general question even in a limited measure and our finding must not be taken as an approval of any tariff or classification provision.

We find that the allegations of the complaint have not been sustained, and an order dismissing the complaint will be entered.

52 I. C. C.



**No. 8131.**  
**IN THE MATTER OF RATES ON AND CLASSIFICATION**  
**OF LUMBER AND LUMBER PRODUCTS.**

*Submitted November 30, 1918. Decided April 7, 1919.*

1. The Commission is empowered, under sections 1, 3, and 15 of the act, to prescribe a classification of lumber and lumber products.
2. When the movement of given articles at commodity rates is to such an extent predominant that the class rates can no longer be regarded the normal adjustment, it is desirable to ascertain whether or not a standardization of rate relationships such as the classifications were intended to afford can again be effected, upon a new basis different from that found inadequate in the existing classifications.
3. Classification should rest in the first instance upon those factors which are definite and readily ascertainable, such as value, risk, and car loading.
4. The range of values of common lumber to such an extent embraces the values of the other articles under consideration as to make impracticable and unjust a differentiation in rates based on value. This element should be considered only in fixing the basic lumber rate and its relationship to rates on commodities not so intimately related to lumber as those here under consideration.
5. The car loading of lumber and lumber products constitutes to a considerable extent the determinative factor in their classification.
6. A percentage relationship between lumber and articles which should take related rates will effect a fairer distribution of transportation costs than the observance of flat differentials.
7. The present record affords no basis for prescribing different rates for different minima.
8. Rates on lumber products should not exceed commodity rates contemporaneously maintained on lumber by more than is indicated in the lumber list suggested herein.
9. Poles and piling from the north Pacific coast and the inland empire should take rates no higher than are contemporaneously applied on fir lumber.

*William A. Wimbish* for Southern Pine Association, Southern Cypress Manufacturers' Association, Georgia-Florida Saw Mill Association, Western Carolina Lumber & Timber Association, North Carolina Pine Association, Northern Pine Manufacturers' Association, Northern Hemlock & Hardwood Association, Michigan Hardwood Manufacturers' Association, and Hardwood Manufacturers' Association of the United States; *Joseph N. Teal, Rogers MacVeagh, William C. McCulloch*, and *Teal, Minor & Winfree* for West Coast Lumbermen's Association, Eastern Oregon Lumber Producers' Association, Western Pine Manufacturers' Association, California White

52 I. C. C.

& Sugar Pine Association, and California Redwood Association; *Luther M. Walter*, *John S. Burchmore*, and *Borders*, *Walter & Burchmore* for Wholesale Millwork Association and Western Red Cedarmen's Association; *J. V. Norman* for National Veneer & Panel Manufacturers' Association; *J. V. Norman* and *J. S. Kelley, jr.*, for Nashville Tie Company, *B. Johnson & Sons*, and *Harmount Tie & Lumber Company*; *A. E. Solie* for Central Wisconsin Traffic Bureau and Rotary Birch Club; *Howard Andrews* for Nashville Tie Company; *John T. Hicks* for Section E (tie dealers and producers) of the Lumbermen's Exchange of St. Louis; *John R. Walker* and *Claude W. Owen* for National Implement & Vehicle Manufacturers' Association, Hickory Products' Association, Spoke Manufacturers' Association, Eastern Wheel Manufacturers' Association, Rim Manufacturers' Association, Manufacturers of Tight Cooperage Stock, Southern Hardwood Traffic Association, *McClure Company*, *Kalamazoo Tank & Silo Company*, and *Indiana Silo Company*; *George B. Webster* for National Slack Cooperage Manufacturers' Association and Associated Cooperage Industries of America; *James C. Jeffery* and *F. C. Gifford* for National Association of Box Manufacturers, Eastern Shook & Wooden Box Manufacturers' Association, North Carolina Pine Box & Shook Association, and Northwest Shook Association; *Hal H. Smith* for Maple Flooring Manufacturers Association, *Strable Lumber & Salt Company*, *Nichols & Cox Lumber Company*, and *William Horner*; *John B. Daish* and *J. Raymond Hoover* for American Fork & Hoe Company; *J. H. Townshend* for Southern Hardwood Traffic Association, *Shuttle Block Manufacturers' Association*, *Anderson Tully Company*, *Moore & McFlaren* and *Kansas City Shook & Manufacturing Company*; *John W. McClure* for National Hardwood Lumber Association, Southern Hardwood Traffic Association, and National Lumber Exporters' Association; *T. M. Henderson* for *Rock City Spoke Company*; *Walter Huncke* for Western Silo Company; *George J. Bolender* for *Kalamazoo Tank & Silo Company* and *Nappanee Lumber & Manufacturing Company*; *B. Faisst* for *Lena Lumber Company*; *O. P. Gothlin* and *O. M. Rogers* for *Theodore Kundtz Company*; *C. H. Rodehaver* for Wholesale Lumber Dealers and numerous lumber mills; *E. E. Hooper* and *A. Fletcher Marsh* for Lumbermen's Association of Chicago; *W. J. Eckman* for Lumber Exchange, Cincinnati Chamber of Commerce; *M. J. Christie* for Cincinnati Chamber of Commerce; *M. S. Fitzgerald* for *Washington Pipe & Foundry Company*, *Portland Wood Pipe Company*, *Pacific Coast Pipe Company*, and *National Tank & Pipe Company*; *Wm. T. Hancock* for *Kirby Lumber Company*; *A. G. T. Moore* for Southern Pine Association; *F. J. Donaldson* for West Coast Lumber Manufacturers' Association, Eastern Oregon

Lumber Producers Association and Western Pine Lumber Manufacturers' Association; *V. W. Kraft* for National Slack Cooperage Manufacturers' Association; *James J. Mullin* for Lake Independent Lumber Company; *J. Keavy* for Indianapolis Chamber of Commerce; *G. J. Nielsen* for Gordon, Van Tine Company and U. N. Roberts Company; *C. S. Bather* for Federation of Furniture Manufacturers and Rockford Manufacturers & Shippers' Association; *Donald C. Conn* for Shevlin, Carpenter & Clarke Lumber Company; and *W. B. Martin* for Dubuque Shippers' Association.

*Ewing H. Scott* and *J. H. Henderson* for the State of Iowa and Silo Manufacturers of the State of Iowa.

*Nelson W. Proctor*, *R. Walton Moore*, *Charles J. Riwey, jr.*, and *Charles D. Drayton* for carriers in southeastern and Mississippi Valley territories; *W. W. Collin, jr.*, *O. B. Cardy*, and *Parker McCollister* for central freight association, trunk line, and New England carriers; *Charles Donnelly* for transcontinental lines; *H. G. Herbel*, *T. J. Norton*, *Daniel Upthegrove*, *F. H. Wood*, *Thomas Bond*, and *J. M. Souby* for southwestern lines; *H. S. Bradley*, *E. R. Coleman*, *W. C. Lewis*, *I. R. Janetson*, *Walter Nichols*, and *R. P. Pater-son* for central freight association carriers; *E. A. Haid* and *J. D. Wat-son* for St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas; *O. P. Humburg* for Illinois Central Railroad Company; *W. F. Dickinson*, *Wallace T. Hughes*, *R. J. Brown*, and *J. E. Johnson* for Chicago, Rock Island & Pacific Railway Company and its receiver; *W. F. Dickinson* and *Wallace T. Hughes* for Chicago, Rock Island & Gulf Railway Company; *R. B. Scott* for Chicago, Burlington & Quincy Railroad Company; *J. M. Souby* and *J. R. Mills* for Kansas City Southern Railway Company, Texarkana & Fort Smith Railway Company, and Arkansas Western Railway Company; *R. H. Widdicombe* and *A. E. Cleveland* for Chicago & North Western Railway Company; *R. H. Widdicombe* and *H. M. Pearce* for Chicago, St. Paul, Minneapolis & Omaha Rail-way Company; *R. O. Fyfe* for Western Classification Committee; *O. W. Dynes*, *H. E. Pierpont*, and *C. A. Lahey* for Chicago, Mil-waukee & St. Paul Railway Company; *B. S. Atkinson* for Louisiana & Arkansas Railway; *Fred G. Wright*, *C. E. Perkins*, and *C. C. P. Rausch* for Missouri Pacific Railway, St. Louis, Iron Mountain & Southern Railway and their receiver, and Arkansas Central Rail-way; *William Fitzgerald* for Chesapeake & Ohio Railway Company of Indiana; *S. R. Prince*, *Claudian B. Northrup*, and *Alex. M. Bull* for Southern Railway Company in Mississippi; *J. G. Markey* and *L. W. Watson* for Southern Weighing & Inspection Bureau; *Frank Koch* for Texas & Pacific Railway Company; *N. W. Proctor* for Louisville & Nashville Railroad Company; *D. G. Gray* for Western

Maryland Railway Company; *J. J. Coleman, J. B. Coffey*, and *W. G. Barnwell* for Atchison, Topeka & Santa Fe Railway Company; *C. W. Owen* for Morgan's Louisiana & Texas Railroad & Steamship Company and Louisiana Western Railroad Company; *J. W. Allen* for Missouri, Kansas & Texas lines; *Drew Head* and *J. S. Hershey* for Gulf, Colorado & Santa Fe Railway Company; *F. H. Wood* and *L. T. Wilcox* for Southern Pacific Company; *H. A. Scandrett* and *L. T. Wilcox* for Union Pacific Railroad, Oregon Short Line Railroad, and Oregon-Washington Railroad & Navigation Company; and *E. C. D. Marshall* for Louisiana Railroad & Navigation Company.

#### REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

This proceeding concerns the rate relationship of lumber and certain wood articles which it has been customary to group with lumber in commodity tariffs either at lumber rates or at differentials over the rates on lumber. Lists of articles so grouped are termed "lumber lists," and although all of the articles commonly included are not, strictly speaking, "lumber products," that term has been adopted for convenience to cover all of them.

In several cases, notably the cases of *Eastern Wheel Mfrs. Asso. v. A. & V. Ry. Co.*, 27 I. C. C., 370, *Anson, Gilkey & Hurd Co. v. S. P. Co.*, 33 I. C. C., 332, and 38 I. C. C., 105, and *Yellow Pine Sash, Door & Blind Mfrs. Asso. v. S. Ry. Co.*, 35 I. C. C., 150, our attention was called to inconsistencies in the rate relationships between lumber and lumber products, which were resulting in undue inequalities. We ordered this investigation for the purpose of ascertaining the full extent of such inequalities, and of determining upon a reasonable and nondiscriminatory rate relationship between the various kinds of lumber and lumber products, and particularly greater uniformity of grouping and relationship of rates.

The order instituting this proceeding was entered on July 1, 1915. All common carriers by rail and rail and water subject to the act to regulate commerce were made parties. The shippers who took part represented practically all branches of the lumber industry and such allied industries as manufacturers of sash, doors, and blinds, and other wooden building material, flooring, box shooks and wooden boxes, railway cross-ties, veneer, built-up wood, slack and tight coo-perage stock, agricultural implement and vehicle material, handle material, wooden silos, wooden pipe material, chair stock, tent stock, excelsior, trunk slats, and shippers of logs and of poles requiring more than one car for their transportation. Extensive hearings were held at which all of the interests described were fully heard. Oral argument was heard by the entire Commission both prior and

52 I. C. C.

subsequent to the filing of a proposed report by the examiner, but prior to federal control. On October 31, 1918, we entered an order making the Director General of Railroads a party respondent and providing that if further hearing is not requested by the parties within 30 days the investigation shall be disposed of on the present record. No request for further hearing was made. Since we are here concerned with rate relationships and not with the measure of the rates, and since the rates initiated are very generally percentage increases over the rates formerly in effect, it is evident that the present record is as conclusive under the increased rates initiated by the Director General as it is of the situation which prevailed at the time of the hearing. All references herein to present rates are to rates prevailing prior to the increases authorized by the Director General, and except where otherwise indicated the discussion is based on rates in effect prior to those increases.

A classification of given articles is effected by a determination of their rate relationship. In a measure this is true when articles are grouped together under a commodity description in a commodity tariff as well as when they are included in official, western, or southern classification. In each case classification factors should be considered in determining what articles should be grouped. The groupings in the classifications, of course, have much wider application and, beside providing that certain articles should take the same rates, also provide that other articles should take higher or lower rates, as the case may be. Lumber lists, due to the fact that they include not only articles which take lumber rates but also articles at stated differentials over lumber, resemble more closely the three great classifications than do commodity descriptions generally, and if a lumber list were adopted, to be applied throughout the country, it would to this extent be a classification of national scope which would remove the undue inequalities resulting from prevailing inconsistencies in the rate relationship of lumber and lumber products.

We will first consider the jurisdictional question raised by the respondents, who contend that we have not the power to prescribe a classification of lumber and lumber products, and also their contention that if we had the power it would be inadvisable to exercise it.

#### HAS THE COMMISSION JURISDICTION TO EFFECT A CLASSIFICATION OF LUMBER AND LUMBER PRODUCTS?

It is contended that we may not establish rates "save in substitution for other rates" and likewise may not establish a classification "save in substitution for another classification." Upon this point see *Lake-and-Rail Butter and Egg Rates*, 29 I. C. C., 45. The two situations, however, are similar only in case the new classification covers commodities which the carriers do not hold themselves out to trans-

port. It is evident that our power to require carriers to furnish transportation "upon reasonable request therefor" is not brought in issue by the establishment of a new classification of articles which carriers definitely hold themselves out to transport. The carriers themselves recognized upon the argument that before the amendments to sections 1 and 15 of the act which deal specifically with classification were passed we had power under sections 1 and 3 to determine the rate relationship of different articles so as to effect reasonable rates and avoid undue prejudice "to any particular description of traffic, in any respect whatsoever." This is the very object sought to be attained by the lumber list herein indicated. And it matters little whether the means through which it is to be attained is called a lumber list, a classification, a rate schedule, or a combination of all three. We are empowered, under sections 1, 3, and 15, to effect a rate relationship.

But it is argued on behalf of the carriers that the hearings in this proceeding were so limited as to exclude evidence bearing upon the reasonableness of the rates on lumber and lumber products,<sup>1</sup> without which the Commission may not make an order changing existing rate relationships and thereby possibly decreasing revenues derived from the transportation of these commodities. We did not desire to go into the question of the adequacy of the rates for particular movements or the question of the adjustment of rates from one section as compared with those from another section of the country. It was never contemplated to require the observance of present lumber rates as base rates in connection with any rate relationship or classification which might be prescribed, and under our findings herein carriers may provide the rate relationships indicated in connection with such reasonable base rates as they may believe necessary and justifiable. The question here at issue is one of a proper distribution of transportation costs between different commodities.

#### IS CLASSIFICATION OBJECTIONABLE?

The carriers argue that the very fact that lumber and lumber products are predominatingly accorded commodity rates and not class

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<sup>1</sup> Prior to the hearing in this case the Commission submitted to the parties an outline of testimony to be developed which included the following:

An outline is submitted herewith indicating the matters as to which the Commission desires to develop testimony upon the hearing. It will be noted at the outset that this investigation involves primarily the rate relationship of articles generally included in lumber lists and the question of uniformity in rules, regulations, and tariff provisions affecting rates on such articles. The measure of the rates themselves is not involved. Testimony is therefore not invited with regard to the reasonableness of present rates or the adequacy of the revenues at present derived from the transportation of lumber and lumber products. The Commission expects both carriers and shippers to consider the variances in rate relationships and in the various tariff provisions which are disclosed by the rate study which was made in connection with this investigation and particularly in the tables which comprise the appendix thereto and to explain the necessity for whatever variances it is desired to maintain.

rates indicates the inadvisability of attempting a reclassification. They contend that official, western, and southern classifications and the class rates governed thereby afford the normal basis for rates on these commodities and for rate relationships; that competitive and other conditions have compelled departures from the normal basis in varying degree; and that by prescribing a lumber list we would be attempting what past experience has shown to be futile. The carriers state that the lumber lists themselves, which are at present so generally included in lumber commodity tariffs, should never have been broadened to include articles now frequently accorded a rate relationship to lumber, such as doors, sash, and other forms of millwork, silo material, spokes, and certain other agricultural implement and vehicle material, veneer, built-up wood, and like commodities; that it was a mistake for carriers to have published rates in that manner; and that articles other than lumber were included in lumber lists only because that constituted a convenient and inexpensive method of publishing rates but with no thought of suggesting a fixed rate relationship or of establishing any sort of a classification of lumber and lumber products.

While it is true that commodity rates are generally regarded as designed to take care of particular movements, the circumstances and conditions surrounding which require a departure from the normal adjustment as provided by the classifications and the class rates, it is also true that as to many commodities the movement at commodity rates is to such an extent predominant that the class rates can no longer be regarded the normal adjustment. When that is the case it is desirable to ascertain whether or not a standardization of rate relationships such as the classifications were intended to afford can again be effected, upon a new basis different from that found inadequate in the existing classifications.

The carriers, however, urge that a line must be drawn somewhere between articles which may be grouped with lumber at the same or related rates and articles the rates upon which should be arrived at independently of those prevailing on lumber with a view only of meeting the particular requirements surrounding their movement. They contend that—

When the manufacturing process has been carried to the point where a new commodity is created the rate relationship as compared with the raw material is then destroyed. \* \* \* If there is not to be some more or less arbitrary dividing line at which the application of lumber rates or a percentage higher is to cease, the proposed list is susceptible to still further extension.

Carriers propose by means of a purely artificial standard to eliminate from lumber lists a great many articles which are now in many instances included. The stage of manufacture of an article, which is

in effect the determinative factor which they employ, is only valuable as a guide in classification in so far as it indicates the transportation characteristics of the article concerned, such as its loading qualities, value, and risk in transportation. It affords in and of itself no criterion helpful in deciding what articles may and what articles may not be included in a lumber list.

The exclusion from a lumber list of articles now frequently grouped with lumber should rest upon the same considerations which justify the publication of commodity rates as exceptions to the basis provided by the classifications and the class rates. The proposed lumber list takes the place of the classifications, and any exceptions thereto bear the same relation to it that a commodity rate bears to the standard classifications. It is necessary to exclude from a lumber list only such of the articles here under consideration, if there be any, the rates upon which are determined by factors which prevent a constant rate relationship to lumber. Among such factors are water, carrier, and market competition. Articles which are far removed from lumber in value are generally more susceptible to varying competitive influences than articles the value of which is not so far removed.

No proposal is here made to include in a lumber list articles which are not to-day frequently accorded by the carriers a rate relationship to lumber. The question of including in lumber lists such articles as furniture, vehicles, agricultural implements, and toys is not before us in this proceeding. The record contains no evidence as to their classification characteristics. We can not recognize as valid the inference which the carriers seek to draw that, because lumber is used in their manufacture, their inclusion in lumber lists must follow if certain of the articles here under consideration are thus included.

The carriers urge with particular stress that the rates on lumber vary so greatly according to the direction of movement and territory that they can not properly be taken as a basis upon which to build rates for the movement of the more highly manufactured articles which it is proposed to group with lumber, and that lumber is affected in great measure by conditions which are not common to the other articles. But the very fact that lumber lists have so generally been maintained shows that in the judgment of the carriers the disturbing factors of water, carrier, and market competition have not affected lumber products differently from lumber to a degree sufficient to prevent the maintenance of a close rate relationship. If lumber were affected differently by water, carrier, and market competition than the more highly manufactured products here under consideration one would expect to find no rate relationship maintained in con-



nection with the lowest rates but only in connection with the higher rates on lumber, which are not affected to so great an extent by competition. A study of lumber tariffs indicates just the reverse. Lumber lists are maintained in connection with the rates applicable from the Mississippi Valley and the southwest to the Ohio and Mississippi river crossings and through those crossings to central freight association and trunk line territories, from the same points of origin to western trunk line territory, from the Pacific coast to points as far east as Chicago and from lumber-producing sections in Wisconsin and Minnesota to points in central freight association and western trunk line territories. Lumber lists are not so generally provided for movements from the Ohio River crossings and from points in central freight association territory through those crossings to the south and the southwest, in which direction the rates on lumber are higher than in the reverse direction, nor for intraterritorial movements within southern classification and trunk line territories. The carriers have established a rate relationship to lumber for manufactured products in connection with the lowest rates on lumber. This fact is concretely illustrated in the discussion with regard to mill-work, veneer, and built-up wood given later on.

#### THE NECESSITY FOR A LUMBER LIST.

In the cases which primarily precipitated this investigation, *Eastern Wheel Mfrs. Asso. v. A. & V. Ry. Co.*, 27 I. C. C., 370, *Anson, Gilkey & Hurd Co. v. S. P. Co.*, 33 I. C. C., 332, and 38 I. C. C., 105, and *Yellow Pine Sash, Door & Blind Mfrs. Asso. v. S. Ry. Co.*, 35 I. C. C., 150, we found unduly prejudicial the rate relationships to lumber there disclosed. In the first case cited we said, at pages 381 and 382:

\* \* \* Throughout the country the lack of uniformity in the relationship of rates on wood articles and lumber is marked. \* \* \*

This situation should be remedied and the change should be toward greater uniformity. \* \* \* A fixed and proper rate relationship should be established between the manufactured articles and the rough lumber from which they are made. Publication of lumber rates in commodity tariffs should, under this arrangement, automatically fix the rates on lumber products at the proper differentials. \* \* \*

We are of the opinion that \* \* \* it is unjust, unreasonable, and discriminatory to force club-turned spokes to bear higher rates than are imposed for a like service upon the many analogous manufactured wood articles which move at lumber rates. Section 3 of the act prohibits undue or unreasonable preference or advantage to any person, locality, or any particular kind of traffic.

and in the second, at 33 I. C. C., 341:

If it is just and reasonable that lumber and lumber products take the same rate in one territory, it must be unjust and unreasonable or unjustly discrim-

52 I. C. C.

inatory to maintain and charge a differential in the rates on these respective classes of traffic in another territory, unless the difference in treatment of the same products in different territories has been clearly established by affirmative testimony. If it is impracticable to establish a lumber list, complete or partial, in one territory, it must be equally impracticable to do so in another territory. In other words, carriers should effect uniformity in treatment in the classification of lumber and lumber products throughout the country.

We again confirm the views there expressed and find existing lumber lists and classifications of lumber and lumber products to the extent to which they depart from the lumber list hereinafter indicated unjustly discriminatory.

A uniform lumber list is needed principally to effect an equitable distribution of transportation costs and thus avoid rates which are unjustly prejudicial to certain of the articles under consideration and unduly preferential of others. In fact, this is the prime object of all classification.

While it is desirable, even between articles of entirely different nature, to establish a rate relationship which will effect an equitable distribution of transportation costs, it is necessary between articles which are manufactured from the same raw material, the cost of which constitutes a material element in the final cost.

The considerations mentioned in the preceding paragraphs are referred to in greater detail in the discussion of particular articles given below. The basis for arriving at the rate relationships indicated for the articles discussed below and for all articles included in the lumber list herein contained is given later on under the head "Classification factors, how reflected." The discussion here is largely limited to a showing of the necessity for a rate relationship and to a consideration of the arguments to the contrary advanced by the carriers. The discussion is also limited to the articles grouped under agricultural implement and vehicle material, millwork, veneer, and built-up wood, which, together with silo material, are the articles as to the inclusion of which in a lumber list the carriers raised the greatest objection. The articles discussed are typical of the others.

*Agricultural implement and vehicle material.*—Agricultural implement and vehicle material "in the rough" is at present uniformly accorded lumber rates, but this material "in the white" is sometimes accorded lumber rates, sometimes lumber rates plus 3 cents, and sometimes rates not related to the rates on lumber. The tariffs do not definitely distinguish between material "in the rough" and "in the white," but it is fair to include under the former articles rough sawed, such as axles, bolsters, doubletrees, reaches, stakes, and wagon box boards, and sawed to shape, such as felloes, hounds, poles, and sway bars, and under the latter articles turned, such as hubs, neck yokes, singletrees, spokes, and bent rims.

Upon the hearing the carriers proposed to accord all of the articles grouped under agricultural implement and vehicle material rates related to the rates on lumber, some lumber rates and some lumber rates plus 5 per cent, plus 10 per cent, or plus 20 per cent. In briefs filed since the hearing and subsequent to the first argument held in this case, the carriers proposed to eliminate from lumber lists all of these articles except those which are merely rough sawed, on the ground that the articles sawed to shape, turned, or bent are advanced beyond lumber in stage of manufacture. But as has been observed, the stage of manufacture, in and of itself, can not be regarded as the determining factor. In *Eastern Wheel Manufacturers Assn. v. A. & V. Ry. Co.*, *supra*, at page 380, we said, with regard to the defendants' contention that club-turned spokes should be distinguished from lumber because they are turned whereas lumber is sawed and planed:

\* \* \* It is further contended, however, on behalf of defendants, that turning is entirely separate and distinct from planing and is an additional step in manufacture. That distinction, in so far as it relates to club-turned spokes, is entirely artificial. Each process is a mechanical operation, the object of which is to produce a smooth, finished surface. We see no reason to distinguish the classification or rating of an article upon the ground that it is revolved against a set of knives rather than pushed against knives. Classification and rating should be based upon firmer ground.

The articles grouped under agricultural implement and vehicle material, which the carriers wish to exclude from lumber lists, load as heavily as the articles they agree to include and even heavier than lumber and are not subject to increased risk in transportation above that incurred in transporting lumber. Of the articles which carriers seek to exclude, felloes, hounds not bent, poles and sway bars are of no higher average value than the articles they are willing to retain in lumber lists and of no materially higher average value than lumber. While the average value of other articles, especially spokes, is higher than that of lumber, their values come within the range of values of lumber and therefore they should not be accorded higher rates than lumber. But even if the comparative values were such as to justify higher rates, that would afford no justification for taking spokes out of the lumber lists entirely and according them rates not related to and arrived at independently of lumber rates. Differences in value certainly permit of a constant rate relationship. The facts disclosed by the record with regard to the value of the various articles comprising agricultural implement and vehicle material are set forth in Appendix 1 and may be compared with the values of lumber as shown in Appendix 2. Nor does the record disclose the prevalence of such competitive influences as would in large measure make impossible the maintenance of a constant rate relationship of agricul-

tural implement and vehicle material to lumber. The present rates on agricultural implement and vehicle material are related to rates on lumber which are, on the whole, as low as any lumber rates charged for like distances anywhere within the United States. We believe, therefore, that agricultural implement and vehicle material, both in the rough and in the white, should be accorded rates no higher than on lumber. Higher rates would be unduly prejudicial to agricultural implement and vehicle material, since, even under the carriers' proposals, other articles, which do not load heavier, are not less subject to damage in transportation, and are not materially less in value, will move in large volume at lumber rates.

*Millwork.*—The articles grouped under this head in the lumber list indicated at page 622 *infra* are sash, doors, blinds, and articles embraced by the term "wooden building material (house trim)." The Pacific coast manufacturers call attention to the fact that some of the articles grouped under "millwork" load lighter than others and contend that, if rates are to be based on the relative car loading of lumber and lumber products, the lighter loading millwork articles should take correspondingly higher rates. However, the articles embraced are those which are generally shipped in mixed carloads, some of which, as, for instance, set-up door and window frames, can be loaded to greater advantage in mixed than in straight carloads, and others such as grill work are shipped in comparatively small quantities mixed with other articles. The Pacific coast producing territory may be divided into three groups: First, the north Pacific coast region, including Washington and Oregon west of the Cascade Range; second, the so-called "inland empire," including those parts of Washington and Oregon which lie east of the Cascade Range and also western Montana and practically all of Idaho; and, third, California and Arizona. From the Pacific coast the heavier loading articles such as doors predominate, and this fact is reflected in the rates indicated for millwork from the Pacific coast, not to exceed lumber rates by more than 15 per cent as against lumber rates plus 25 per cent as maximum rates for millwork from the country at large. The exception made for transportation from the Pacific coast is based upon differences in the relative car loading of millwork and lumber from that section as compared with their relative car loading from other producing sections. Both upon the hearing and in briefs filed subsequently the southern carriers proposed to eliminate entirely from lumber lists most of the articles herein described as millwork. A statement of the car loading and value of millwork is given in Appendix 3.

These articles are manufactured from lumber, generally at mill-working plants which are separate and distinct from the ordinary

saw and planing mills which produce lumber. Millworking plants are located in practically every town of significance throughout the United States. Most of them are confined in their distribution to a radius of from 200 to 300 miles. But in the middle west, principally in Iowa and Wisconsin, and on the Pacific coast are located manufacturing plants which distribute millwork to practically all parts of the country in competition with one another and with the smaller millworking plants located at or near the points of consumption. On the Pacific coast, millwork is in some instances manufactured at sawmill plants which produce lumber. To some extent also the millworking plants situated within the southern lumber-producing territory distribute their products in other sections of the country.

The southern carriers especially emphasize the extent to which the rate relationships indicated necessitate changes in rates on millwork for movements within southern classification territory should present lumber rates be retained as base rates. Thus in their briefs they call attention to rates on millwork applicable for movements within southern classification territory which are all the way from 139 to 400 per cent of the lumber rates applicable between the same points and to the fact that the basis indicated will in some instances require a very material reduction in the rates on millwork. The following rates, in cents per 100 pounds, on doors and lumber are typical of those cited by the carriers:

From—	To—	Distance.	Present rates.			Rates on doors herein indicated not to exceed 25 percent over lumber rates. <sup>1</sup>
			Doors.	Lumber.	Difference.	
		Miles.	Cents.	Cents.	Cents.	Cents.
High Point, N. C.....	Martinsville, Va.....	107	\$ 22	12	10	15
Do.....	Spartanburg, S. C.....	164	16	11.5	4.5	14.4
Do.....	Paris, S. C.....	181	17	12.5	9	15.6
Atlanta, Ga.....	Columbia, S. C.....	253	\$ 16	10	6	12.5
Do.....	Asheville, N. C.....	262	\$ 20.5	15	5.5	18.7
Anniston, Ala.....	Augusta, Ga.....	274	20	12	8	15
High Point, N. C.....	Atlanta, Ga.....	346	46	16	30	30
Atlanta, Ga.....	Memphis, Tenn.....	418	\$ 23	16	7	30
Louisville, Ky.....	Atlanta, Ga.....	468	32	22	10	37.5
Do.....	Montgomery, Ala.....	491	30	18	12	22.5
Lynchburg, Va.....	Macon, Ga.....	523	43	22	21	37.5
Louisville, Ky.....	Athens, Ga.....	541	34	24	10	30
Lynchburg, Va.....	Birmingham, Ala.....	589	46	24	22	30
High Point, N. C.....	Cincinnati, Ohio.....	602	39	25	14	31.3
Louisville, Ky.....	Jacksonville, Fla.....	817	32	25	7	31.3

<sup>1</sup> On the assumption that present lumber rates are observed as base rates.

<sup>2</sup> Rate on mixed carloads of building material, the mixture to contain at least 25 per cent of material other than doors, sash, and blinds, is 14 cents.

<sup>3</sup> Applies only on mixed carloads of building material, the mixture to contain at least 25 per cent of material other than doors, sash, and blinds. Does not apply on straight carloads of doors, sash, and blinds.

<sup>4</sup> Rate on straight carloads of yellow-pine doors is 18 cents.

For comparative purposes there are set forth below other rates, in cents per 100 pounds, on doors and lumber which do not present so wide a spread as those shown in the preceding table:

From—	To—	Distance.	Present rates.			Rates on doors herein indicated not to exceed 25 per cent over lumber rates. <sup>1</sup>
			Doors.	Lumber.	Difference.	
		Miles.	Cents.	Cents.	Cents.	Cents.
Oakrosh, Wis.	Chicago, Ill.	166	9.5	8.5	1	10.6
Do.	Goodenow, Ill.	199	14.8	13.8	1	17.2
Do.	Woodland, Ill.	247	16.5	15.5	1	19.4
Do.	Findlay, Ill.	350	18	17	1	21.3
Do.	Kinmundy, Ill.	408	18	17	1	21.3
Do.	Ina, Ill.	452	19	18	1	22.5
Do.	Thebes, Ill.	543	21.1	20.1	1	25.1
Fond du Lac, Wis.	Logansport, Ind.	265	18	16	2	20
Do.	Indianapolis, Ind.	331	18	16	2	20
Do.	Columbus, Ohio.	442	20.1	18.1	2	23.6
Do.	Pittsburgh, Pa.	616	23.2	21.2	2	26.5
Wickliff, Ky.	St. Louis, Mo.	160	10	9	1	11.3
Cayce, Ky.	do.	201	11	10	1	12.5
Humboldt, Tenn.	do.	264	13.5	12.5	1	15.6
Corinth, Miss.	do.	328	16.5	15.5	1	19.4
Egypt, Miss.	do.	403	16.5	15.5	1	19.4
Brookville, Miss.	do.	451	18	17	1	21.3
Birmingham, Ala.	do.	478	21	20	1	25
Yellow Pine, Ala.	do.	609	21	20	1	25
Mobile, Ala.	do.	657	20	19	1	23.8
Memphis, Tenn.	Madison, Wis.	612	22.7	21.7	1	27.1
Do.	Fond du Lac, Wis.	678	26	25	1	31.3
Do.	Minneapolis, Minn.	897	26	25	1	31.3
Do.	Ironwood, Mich.	941	29.3	28.3	1	35.4
Do.	Duluth, Minn.	1,006	29	28	1	35
Cincinnati, Ohio	High Point, N. C.	611	24	21.5	2.5	26.9
Do.	Charlotte, N. C.	651	25	22	3	27.5
Do.	Aberdeen, N. C.	693	25	22.5	2.5	28.1
Do.	Florence, S. C.	722	27.5	24.9	2.6	31.1
Do.	Camden, S. C.	739	26.25	24.75	1.5	30
Do.	Columbia, S. C.	759	25	22	3	27.5
Atlanta, Ga.	Roanoke, Va.	473	23	20	3	25
Do.	Charlottesville, Va.	535	27	24	3	30
Columbus, Ga.	do.	661	27	24	3	30
Eufaula, Ala.	Roanoke, Va.	716	23	20	3	25
Columbus, Ga.	Strasburg, Va.	802	27	24	3	30
Eufaula, Ala.	Norfolk, Va.	853	23	20	3	25

<sup>1</sup> On the assumption that present lumber rates are observed as base rates.

<sup>2</sup> Applies only on mixed carloads of building material, the mixture to contain at least 25 per cent of material other than doors, sash, and blinds. Does not apply on straight carloads of doors, sash, and blinds

The rates on lumber in the first table, used by the carriers for comparison with rates on millwork, taken as a whole, are no lower for like distances than the rates on lumber shown in the second table, which are only slightly lower than the rates on millwork applicable to the same movements or only slightly lower. It is obvious that the lumber rates shown in both tables may with equal propriety be used as a basis for constructing rates on millwork. Competitive influences do not appear to have so unequally affected the lumber rates as to unfit them for use as a basis for rate relationships.

The rates on millwork shown in the first table are very much higher for equal distances than the rates shown in the second table, which illustrates the danger of inconsistencies and inequalities arising

when rates are made without observing a reasonable standard of rate relationships. Of course rates made without the observance of any particular rate relationship permit more readily the charging in each particular instance of what the traffic can bear, irrespective of the reasonableness of the charge, but that is obviously not a result which it is desirable to promote. Both tables emphasize the necessity for establishing a rate relationship of millwork to lumber. In *Yellow Pine Sash, Door & Blind Mfrs. Asso. v. S. Ry. Co.*, 35 I. C. C., 150, the varied rate relationship of millwork and lumber prevailing within southern classification territory is set forth in detail. At page 155 of that report, after referring to our decisions in the *Eastern Wheel Case* and the *Anson, Gilkey & Hurd Case*, *supra*, we said:

Greater uniformity and a new rate relationship between lumber and its products, based upon more scientific principles, are necessary. Following the cases cited and the principles therein announced, and from all the facts and circumstances of record, we are of the opinion that the rates on building material here involved should bear a uniform relation to the lumber rates.

*Veneer and built-up wood.*—Perhaps none of the articles here under consideration bear a more inconsistent rate relationship to one another and to lumber than veneer and built-up wood. In southern and western classification territories veneer one-eighth of an inch and over in thickness is generally included in commodity tariffs at lumber rates, and in official classification territory veneer over one-sixteenth of an inch in thickness takes lumber class or commodity rates. It is particularly on built-up wood and on veneer under one-eighth of an inch in thickness in the first two and one-sixteenth of an inch and under in thickness in the last territory above named that the prevailing rates are inconsistent. Veneer under one-eighth of an inch in thickness is, under varying descriptions, accorded lumber rates, lumber rates plus 1 cent, 3 cents, 5 cents, and 10 cents, and commodity or class rates not stated in terms of relationship to lumber rates. Built-up wood is accorded rates arrived at on all of the bases above described for veneer, except lumber rates plus 10 cents. The carriers advocate leaving veneer and built-up wood out of lumber lists entirely and according them rates arrived at independently of the rates on lumber. We indicate herein for veneer and built-up wood of all thicknesses, when manufactured from figured woods or woods of value, rates not to exceed rates on lumber by more than 15 per cent; for veneer of all thicknesses manufactured from all other woods, rates no higher than on lumber; and for built-up wood manufactured from such veneer rates not to exceed rates on lumber by more than 10 per cent.

Numerous inconsistencies result under the present rates on veneer and built-up wood. Thus, for instance, veneer under one-sixteenth

of an inch in thickness takes lumber rates plus 5 cents from the southwest to western trunk line territory and to Mississippi and Ohio river crossings. If several pieces of the same veneer are glued together and by this further process of manufacture built-up wood is constructed, the product takes lumber rates plus 3 cents, or if it be intended for the manufacture of coffins, lumber rates. Similarly it was testified that the rate on one-sixteenth-inch oak veneer from Wausau, Wis., to Chicago, is the class B rate of 18 cents, but that built-up wood constructed of sheets of one-sixteenth-inch veneer takes a commodity rate for the same movement of 11 cents per 100 pounds, or 7 cents less than the rate on veneer. The only distinguishing characteristic which the carriers advanced in justification of higher rates on veneer under one-eighth of an inch in thickness than for veneer one-eighth of an inch and over in thickness is value. The record, however, discloses that the differences in value between veneer of different thicknesses are not such as to justify different rates. A statement of values of veneer and built-up wood and of loading characteristics of these commodities is given in Appendix 4.

Should veneer and built-up wood be accorded class rates in accordance with the carriers' proposals, the disparity between the rates on these articles and commodity rates on lumber will be greatly augmented. Veneer and built-up wood come into active competition with lumber. The cheaper grades are used for the same purposes to which ordinary lumber is devoted, and the highest grades come into competition with lumber manufactured from woods of value. A comparison of the value, risk in transportation, and loading characteristics of lumber, veneer and built-up wood indicates that higher freight charges on veneer manufactured from ordinary woods than on lumber and higher charges than lumber rates plus 15 per cent on veneer manufactured from woods of value, are unduly prejudicial to shippers of veneer and built-up wood. In prevailing tariffs lumber manufactured from woods of value is almost universally accorded lumber rates plus 3 cents. It is the present proposal of carriers to accord lumber manufactured from woods of value lumber rates plus 15 per cent, and this is the basis herein indicated. The rate relationships indicated for lumber, veneer, and built-up wood are in consonance with the rate relationship which the carriers propose between ordinary lumber and lumber manufactured from woods of value, which is not true of the rate relationship of lumber, veneer, and built-up wood proposed by the carriers. The relationship indicated of lumber rates not to exceed 10 per cent for built-up wood manufactured from ordinary woods is based upon a comparison of the loading characteristics and value of built-up wood and lumber.



The southern carriers urge that the rate relationship indicated will result in extensive reductions in rates on veneer and built-up wood just as they claim will be the case with mill-work. Among the rates on veneer to which they call attention is the rate of 46 cents per 100 pounds from Cincinnati, Ohio, and New Albany, Ind., to Atlanta, Ga., as compared with 22 cents for lumber; 46 cents from High Point, N. C., to Birmingham, Ala., as compared with 24 cents on lumber; 56 cents from Atlanta to St. Louis, Mo., as compared with 19 cents for lumber; 38.1 cents from Knoxville, Tenn., to New York as compared with 28.5 cents on lumber; and 46 cents from Augusta, Ga., to Cincinnati, Ohio, as compared with 23 cents on lumber. These rates present a wide disparity between veneer and lumber. While the testimony indicates that there is some movement of veneer on these rates, it also indicates that the movement from the Ohio River and from High Point and other southern points of origin to destinations in southern classification territory is limited as compared with the movement from and to other territories from and to which the rates on veneer are more favorably related to the rates on lumber.

In 1911 the seven principal veneer producing states in the order of their importance were Arkansas, Michigan, Wisconsin, Illinois, Kentucky, Indiana, and Missouri. Arkansas is located in southwestern territory, from which veneer under one-eighth inch in thickness moves at commodity rates 3 cents higher than lumber rates and one-sixteenth inch and under at lumber rates plus 5 cents, while built-up wood moves at lumber rates plus 3 cents unless intended for the manufacture of coffins, when it moves at lumber rates. Wisconsin is in western trunk line territory, where veneer and built-up wood move predominately at lumber rates plus 1 cent. Missouri is on the border line of western trunk line territory and southwestern territory. Michigan, Illinois, and Indiana are in official classification territory, where class rates predominate on veneer and built-up wood and also prevail to a considerable extent on lumber. Upon the argument and in briefs the carriers protested strongly against a comparison of the rates on veneer maintained for movements within southern classification territory with rates for like distances which are closely related to lumber rates maintained in other territories. They contend that such a comparison goes to the reasonableness of the rates on veneer, which is a matter expressly excluded from consideration in this proceeding. The comparison is made, however, not with the view of indicating whether or not the veneer rates cited by the carriers are reasonable, but to prove the reasonableness and justice of maintaining throughout the country a consistent rate rela-

52 I. C. C.

tionship between veneer, built-up wood, and lumber. The comparisons made are particularly forceful from this standpoint, since the lumber rates in the territories where rates on veneer are made by relationship to the lumber rates are no higher, taken as a whole, than in southern classification territory or in the territories where a close rate relationship is not at present observed.

#### CLASSIFICATION FACTORS—HOW REFLECTED.

Before considering any other factors, there should be ascertained the bearing upon classification of those factors which are definite and readily ascertainable, such as value, risk, and the relation of weight to space, which is herein called car loading. If other influences require a modification of the result, such modification may thereafter be made. The evidence indicates a lack of information on the part of the carriers as to the comparative car loading and value of the articles here concerned. Almost all the evidence introduced in this respect came from shippers. Carriers should obtain this information by systematic periodical investigation, and should reflect differences in car loading and value before making a final determination as to rate relationships.

Value is a factor in classification, for two reasons: Because carriers incur a greater risk in transporting more valuable articles and because value is generally indicative of the ability of a commodity to pay transportation charges.

While in some instances the differences in the average value of common lumber and some of the other articles here discussed is considerable, the range of values even of common lumber to such an extent embraces the range of values of the other articles under consideration as to make impracticable and unjust a differentiation in rates based on value. The facts with regard to this are given in greater detail in Appendix 2. They support the conclusion that rather than reflect value in a rate relationship between lumber and lumber products this element should be considered only in fixing the basic lumber rate and its relationship to rates on commodities not so intimately related to lumber as those here under consideration. Thereby will be avoided the inconsistency of transporting certain articles at lumber rates and others at higher than lumber rates when such articles are of equal value and of like transportation characteristics.

Moreover, where there is a considerable difference in value it will frequently be found, as, for instance, in the case of millwork as compared with lumber, that the more valuable articles load lighter

52 I. C. C.

than lumber and that by reflecting this difference in car loading a sufficient spread in rates will already have been attained as between lumber and the article concerned.

The difference in damage claims accruing in connection with the movement of lumber and lumber products is not sufficient to warrant differences in rates. Manufacturers of lumber testified that with the exception of heavy timbers, lumber is usually loaded in box cars. Open cars are used only in times of car shortage, and while many of the better grades of dressed lumber could not be shipped in open cars without damage unless housed in with cheaper lumber, as it was testified is sometimes done, certain grades of rough lumber would likewise be in danger of damage from the elements if shipped in open cars. While lumber moves largely in equipment of the same character as that used in transporting lumber products, it lends itself more readily to shipment in cheaper equipment than certain\*but not all of the products.

The car loading of lumber and lumber products constitutes to a very considerable extent the determinative factor in the classification of these commodities. An article to be grouped with lumber may be of comparatively low density, of a shape which does not permit compact loading, or its commercial unit of sale may be such as not to permit a full utilization of the available space in a car. If for these or any other reasons in actual transportation it loads lighter per unit of space than lumber, it must obviously cost more per 100 pounds to transport than lumber.

The average loading of certain of the articles under consideration such as agricultural implement and vehicle material, cooperage stock, handle material, and veneer is not so different from the average loading of lumber as to require differences in rates. But other articles, such as millwork, built-up wood, and silo material, load lighter per unit of space than lumber, and on this account ought to be accorded higher rates.

In determining what rate relationship will correctly reflect differences in loading characteristics of lumber and lumber products the question arises as to how these rate relationships should be measured. At present articles grouped with lumber in lumber lists are accorded either lumber rates or flat differentials, generally 1, 2, 3, or 5 cents over lumber rates. It is the contention of the middle western manufacturers of millwork that the rate relationship of lumber and lumber products, particularly of millwork and lumber, should be expressed in percentages rather than flat differentials. Percentage differences were adopted by the southern carriers in their proposals made upon the hearing in this proceeding but are of course not suggested except as to lumber and grouped articles made from woods of value in con-

52 I. C. C.

nection with their present proposed lumber list which is confined to articles which should in their opinion be accorded the same rates as lumber manufactured from the same species of wood. The Pacific coast manufacturers of lumber and of millwork are strongly opposed to a percentage difference, and in this respect are supported by the transcontinental carriers. They contend that there should be no difference in rates between millwork and lumber from the Pacific coast, and that if a difference is to be established it should be expressed in terms of a flat differential rather than by percentages. Other shippers of lumber and lumber products took no definite stand as to whether their rate relationships should be expressed in percentages or flat differentials.

We believe that a percentage relationship between lumber and related articles will effect a fairer distribution of transportation costs than flat differentials. Class rates uniformly present wider spreads for the longer than for the shorter distances, and in many cases follow strictly for all distances and in others approximately a percentage relation between the classes. Were the entire difference in rates between millwork and lumber justified on the ground of a higher value for the former and the consequent ability of millwork to pay higher rates than lumber, the contention of the Pacific coast interests that a flat differential should prevail would be valid, for the ability of one commodity to bear a greater share of transportation costs than another is in most cases independent of the length of the haul. But as has been observed, value is not a determinative factor in the classification of lumber and lumber products. The relative car loading of the articles included in uniform lumber lists is the basis upon which a differentiation in rates should be made. This factor has a direct bearing upon transportation costs. The lighter loading of such articles as millwork increases their cost of transportation in the same proportion, but of course by a greater amount for the longer than for shorter distances. This factor, therefore, can not be reflected by a flat differential, but requires the establishment of a percentage difference.

It is, of course, evident that a finding upon the facts disclosed by this record that the rate relationship of lumber and lumber products should be based upon their relative car loading rather than upon considerations of value and risk in transportation does not lead to the conclusion that value and risk should never be regarded as determinative classification factors and that classification should in all cases reflect only such differences in car loading as may exist between different articles. Still that is the inference which is erroneously sought to be drawn in some of the briefs which were filed in support of exceptions taken to the examiner's proposed report. The

52 I. C. C.

value and risk in transportation of lumber and lumber products were given careful consideration. The facts of record show that value and risk in most instances do not afford a basis for a differentiation in rates between lumber and most lumber products. There may be other commodities such as iron and steel where no substantial differences in car loading exist and where differences in value are material and afford a just ground for differences in rates, and there doubtless are many commodities in the classification of which many factors, including car loading, value, and risk, should be considered.

The Pacific coast interests argue that "the percentage theory is incapable of equitable application to commodity rates in that it takes cognizance merely of transportation conditions and absolutely disregards existing commercial and competitive conditions," in view of which they contend no differential should be observed from the Pacific coast on millwork and lumber. The transcontinental carriers may adjust their lumber rates so as to permit the freest competition in common markets between Pacific coast lumber and lumber products and the same commodities produced elsewhere. But, as already indicated, they may not, by means of inequalities in their rates on lumber and millwork, confine the production of millwork from Pacific coast lumber to the Pacific coast. Such disturbances in existing relationships between competitive localities as will result from the rate relationships herein indicated will be necessary in order to remove undue prejudice and disadvantage. This is an entirely different matter from the disturbances of existing relationships between competitive localities which might result from such horizontal increases in rates as were contemplated in *The Fifteen Per Cent Case*, 45 I. C. C., 303, to which reference was made in this connection by the Pacific coast interests.

#### RATE RELATIONSHIPS AND COMMODITY DESCRIPTIONS.

The examiner's report contains alternative conclusions. The first proposal is to promulgate a lumber list, such as that given below, providing rate relationships between the various articles included. The other is to establish different rates for different minima, to be applied to all the articles included in a lumber list.

Differences in car loading are to a great extent dependent upon the fact that it is impossible to load as great a weight per unit of space of one commodity as of another. The prevailing carload minima also tend to limit the range of loading per unit of space and the car loading of different commodities is often determined by commercial units of sale. Nevertheless, there are considerable differences in the loading per unit of space by different shippers of

52 I. C. C.

the same commodity, and also for different shipments from a single shipper. Some shipments of lumber probably are not loaded heavier than other shipments of articles of comparatively low average car loading. It is a defect inherent in the present method of fixing, with few exceptions, only one rate and one carload minimum for each commodity that inequalities of this kind arise in freight rates which are made to reflect the average car loading of commodities.

The present record does not afford a basis for establishing different rates for different minima. As indicated by the examiner, additional information would be necessary before the details of such a plan could be developed. Nor have the parties had the opportunity to present evidence bearing upon the practicability of adopting such a plan. With respect to the practical application of different rates for different minima for lumber and lumber products, the following questions arise:

1. Is the cubical capacity of cars a sufficiently reliable guide of their loading possibilities to permit rates to be charged in accordance with the weight loaded per cubic foot, or are the differences in the manner of constructing cars such as to cause a material difference in the loading possibilities of cars of the same cubical capacity?

2. Can a shipper's choice of different sizes of cars be so limited as to be fair to him and also prevent too great a burden from falling upon the carrier in furnishing cars of the sizes ordered?

3. Can a two-for-one and large-car-small-car rule, such as would be necessary in connection with different rates for different minima due to the fact that the equipment of the carriers is not standardized but is composed of cars which vary widely in capacity, be applied with equality and fairness?

On account of the state of the record, we are in a position at this time to consider only the first alternative suggested by the examiner.

The record supports the adoption of the lumber list given below.

As to those articles which are inclosed in brackets in the list given below the testimony is not sufficient to justify a finding, but from the information available the rate relationships indicated appear correct and are recommended for adoption. As to all other articles listed, carriers should observe as maxima the lumber rates or rates which do not exceed lumber commodity rates contemporaneously maintained between the same points by more than is indicated below:

The following articles, whether or not creosoted or otherwise chemically treated and when made entirely of wood, unless otherwise specified, will take the rates applicable on lumber of the same species of wood as that from which they are made or rates which do not exceed the rates on lumber by more than percentages indicated. Such rates will not apply on articles polished or varnished, except when specifically so provided.

52 I. C. C.

- Lumber.—Indicates that rates are not to exceed rates on lumber of the same species.  
 5 ————Indicates that rates are not to exceed 5 per cent higher than rates on lumber of the same species.  
 10 ————Indicates that rates are not to exceed 10 per cent higher than rates on lumber of the same species.  
 15 ————Indicates that rates are not to exceed 15 per cent higher than rates on lumber of the same species.  
 20 ————Indicates that rates are not to exceed 20 per cent higher than rates on lumber of the same species.  
 25 ————Indicates that rates are not to exceed 25 per cent higher than rates on lumber of the same species.

Articles.	Ratings.
Agricultural implement, sleigh, and vehicle materials embrace the following articles when sawed, planed, turned, bent, mitred, tenoned, bored, but not primed, painted, nor ironed:	
Apron slats.....	Lu ber.
Axles.....	
Blocks, hub and spoke.....	
Bolsters.....	
Bows.....	
Doubletrees.....	
Felloe material.....	
Felloes.....	
Hounds.....	
Hubs.....	
Neck yokes.....	
Poles.....	
Reaches.....	
Rims.....	
Rim strips.....	
Sand boards.....	
Shafts.....	
Singletrees.....	
Spokes.....	
Spoke timber.....	
Stakes.....	
Sway bars.....	
Tongues.....	
Wagon-box sideboards and bottoms.....	
Whiffletrees.....	
Apron slats. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Aprons, window. <i>See</i> Lumber.	
Astragals. <i>See</i> Lumber; Millwork.	
Axles <i>See</i> Agricultural implement and vehicle material.	
Balusters. <i>See</i> Lumber; Millwork.	
Balustrade work. <i>See</i> Millwork.	
[Bark, tan or spent, from woods of any kind (minimum weight 4,000 pounds).....	Lumber.]
Baseboards. <i>See</i> Lumber.	
Bases, column. <i>See</i> Millwork.	
[Basket bottoms and tops from scarfed or unscarfed material, loose or in bundles.....	Lumber.]
Beads, angle, corner, and cornice. <i>See</i> Millwork.	
Bed slats.....	Lumber.
Beehives. <i>See</i> Box and crate material.	
Billets. <i>See</i> Lumber.	
Blinds. <i>See</i> Millwork.	
Blocks, including such as base, center, core, corner, head, heading, last, plinth, stave, spool, paving, shingle, and shuttle ( <i>see also</i> Agricultural implement, sleigh, and vehicle material; Match splints, strips, or blocks; Mine material).....	Lumber.
Boards. <i>See</i> Lumber.	
Bolsters. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Boughs. <i>See</i> Waste.	
Bows, wagon. <i>See</i> Agricultural implement and vehicle material.	
Box and crate material (other than cigar-box material), knocked down flat, including wire bound, consisting of ends, sides, tops, and bottoms of boxes, crates, egg cases, and beehives, stenciled or unstenciled, of solid or built-up wood, with or without cleats, loose or in bundles ( <i>see also</i> Packages).....	Lumber.
Braces and brackets, telegraph, telephone, and insulator.....	Lumber.
Brackets, cornice. <i>See</i> Millwork.	
Built-up wood, consisting of two or more pieces of veneer glued together other than when made from figured veneer or from woods of value.....	10
Built-up wood, when made from figured veneers or from woods of value.....	15
Caps, column. <i>See</i> Millwork.	
Caps, mining. <i>See</i> Mine material.	
Carpenter's molding. <i>See</i> Lumber.	
Casing. <i>See</i> Lumber; Millwork.	
[Casing, steam-pipe covering.....	Lumber.
Cask material. <i>See</i> Cooperage stock.	
Ceiling. <i>See</i> Lumber; Millwork.	
Chair stock, sawed, planed, turned, but not set up, primed, painted, nor ironed.....	Lumber.
Clapboards. <i>See</i> Lumber.	
Closet fittings. <i>See</i> Millwork.	
Coal doors. <i>See</i> Doors, grain and coal doors, k. d. or nailed.	
Coffin stock. <i>See</i> Built-up wood.	
Columns. <i>See</i> Lumber; Millwork.	

Articles.	Ratings.
Combined wood. <i>See</i> Built-up wood.	
Compound wood. <i>See</i> Built-up wood.	
Cooling tower material, consisting of staves and other wooden parts used in the construction of cooling towers, and also iron or steel fixtures (the weight of the iron or steel articles not to exceed 20 per cent of the entire weight of load).	10
Cooperage stock, embraces slack and tight barrel, cask, keg, and hogshead material, viz:	
Heading, circled or square, matched or unmatched	
Head linings	
Hoops, sawed, sliced, cut, shaved, dressed, straight or coiled	Lumber.
Staves, cut, bucked, hewed, sawed, planed, listed or unlisted, jointed or unjointed, chamfered and crossed	
Cores, for carpets or rugs	Lumber.]
Cores, for paper rolls	10]
Cot frame material. <i>See</i> Frame material.	
[Covers, ice can and washtub	10]
Crates. <i>See</i> Box and crate material.	
Cresting. <i>See</i> Millwork.	
Cribbing. <i>See</i> Mine material.	
Cross arms, telegraph and telephone (including pins)	Lumber.
Cross banding and filling. <i>See</i> Veneer.	
Cut stock. <i>See</i> Lumber.	
[Dimension stock, edges glued together	Lumber.]
Door jambs. <i>See</i> Lumber; Millwork.	
Door panels. <i>See</i> Panels, door, plain	
Doors, except grain and coal doors. <i>See</i> Millwork.	
Doors, grain and coal doors, k. d. or nailed	Lumber.
Doors, screen. <i>See</i> Millwork.	
Doubletrees. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
(Eave troughs	Lumber.
Edgings. <i>See</i> Waste.	
Egg-case material. <i>See</i> Box and crate material.	
Felloes and felloe material. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Fence stays or lath as used in the manufacture of combined wood and wire fencing	Lumber.
Fittings, closet or pantry, k. d. <i>See</i> Millwork.	
Flitches. <i>See</i> Lumber.	
Flooring. <i>See</i> Lumber.	
[Frame material, k. d., cot and mattress	10]
Frames, blind, door, screen and window, k. d., with or without pulleys	Lumber.
Fruit and vegetable packages. <i>See</i> Packages, fruit and vegetable; Box and crate material.	
Grain doors. <i>See</i> Doors, grain and coal, k. d. or nailed.	
Grille work. <i>See</i> Millwork.	
Guttering. <i>See</i> Lumber.	
Handle material, not further finished than sawed or turned to shape	
Heading. <i>See</i> Cooperage stock.	
Head linings. <i>See</i> Cooperage stock.	
Hog product. <i>See</i> Waste.	
Hogshead material. <i>See</i> Cooperage stock.	
Hoods, window. <i>See</i> Lumber.	
Hoops. <i>See</i> Cooperage stock.	
Hounds. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
House trimmings, n. o. s., interior or exterior, k. d. <i>See</i> Millwork.	
Hubs. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Ice-can covers. <i>See</i> Covers, ice can and washtub.	
Jambs, door. <i>See</i> Lumber; Millwork.	
Keys, tent. <i>See</i> Tent stock.	
Kindling, manufactured from sawdust, pitch, and turpentine drippings. <i>See</i> Waste.	
[Ladder material	
Lagging. <i>See</i> Mine material.	
[Lasts, not further finished than rough turned	Lumber.]
Lath. <i>See</i> Lumber.	
Lath, Byrkit (combined lath and sheathing). <i>See</i> Lumber.	15]
Linings, head. <i>See</i> Cooperage stock.	
Listings. <i>See</i> Waste.	
Lumber. The product of saw and planing mill plants not further advanced in manufacture than by sawing, resawing, and passing lengthwise through a standard planing machine, cross cut to length, and end matched, such as:	
Astragals.	
Balusters.	
Baluster stock.	
Baseboards.	
Boards.	
Billets, rived, split, or sawed.	
Casing, door or window.	
Ceiling, except panel.	
Clapboards.	
Columns, solid or hollow.	
Cut stock for the manufacture of sash, doors, and blinds, and other millwork	
Flitches.	
Flooring, except parquetry or wood carpet	
Guttering.	
Jambs, door.	
Lath.	
Lath, Byrkit (combined lath and sheathing).	



Articles.	Ratings.
<b>Lumber—Continued.</b>	
Moldings, carpenter's (as distinguished from ornamental picture and other moldings).	
Partition.	
Pickets or lath, fence.	
Planks.	
Railings and rails.	
Risers.	
Sheathing.	
Shelves, k. d.	
Siding.	
Staves, sile	
Stepping.	
Strips.	
Timbers.	
Treads.	
Wainscoting, except panel.	
Window aprons, hoods, and stools.	
All of the articles above listed when made from woods other than woods of value	
(except that lath and fence pickets and lath from all species of wood are included)...	Lumber.
When made from woods of value.	15
Lumber, broken, of miscellaneous widths and lengths, and none as long as 10 feet. <i>See Waste.</i>	
Match blocks. <i>See Match splints, strips, or blocks.</i>	
Match splints, strips, or blocks.	Lumber.
Mattress frame material. <i>See Frame material.</i>	
Millwork. Embraces the following articles, unironed, when further advanced in manu-	
-facture than described under the heading "Lumber":	
Astragals.	
Balusters.	
Balustrade work.	
Bases, column.	
Beads, angle, corner, cornice.	
Blinds.	
Brackets, cornice.	
Caps, column.	
Casing, door and window, panel.	
Ceiling, panel.	
Column, solid or hollow.	
[Cresting]	
Doors, except grain and coal doors, unglazed or glazed with common window glass or glass	
given the same rating as common window glass in the classification governing the tariff.	
Doors, screen, with or without wire.	
Fittings, closet or pantry, k. d.	
Frames, blind, door, screen, and window, s. u., with or without pulleys.	
[Grille work]	
Jambs, door.	
Newels.	
Ornaments, gable and post.	
Panelwork.	
Pilasters.	
Portière work.	
Railings and rails.	
Risers.	
Rosettes.	
Sash, s. u., unglazed or glazed, with common window glass or glass given the same rating	
as common window glass in classification governing the tariff.	
Screens, door and window, including wire.	
[Scrollwork]	
Shelves, k. d.	
Spindles.	
[Store fronts]	
Treads.	
[Turned work entering into the construction of buildings]	
Wainscoting, panel.	
Mine material, consisting of:	
Timbers.	
Lagging.	
Stulls.	
Props.	
Caps.	
Cribbing.	
Rails.	
Supports.	
Wedges.	
Molding, carpenter's. <i>See Lumber.</i>	
Neck yokes. <i>See Agricultural implement, sleigh, and vehicle material.</i>	
Newels. <i>See Millwork.</i>	
Ornaments, gable and post. <i>See Millwork.</i>	
[Packages, fruit and vegetable, made from scarfed or unscarfed box material(see also Box and	
crate material)]	Lumber.
Panels, door, plain.	Lumber.
Panelwork. <i>See Millwork.</i>	
Pantry fittings. <i>See Millwork.</i>	
Partition. <i>See Lumber.</i>	
Paving blocks. <i>See Blocks.</i>	

Articles.	Ratings.
Pickets. <i>See</i> Lumber.	
Picture backing. <i>See</i> Veneer.	
Plasters. <i>See</i> Millwork.	
Piles or piling, peeled or unpeeled.....	Lumber.
[Pins, dowel.....	15]
Pins, insulator.....	Lumber.
Pins, tent. <i>See</i> Tent stock.	
Pipe material, staves and other wooden parts used in the construction of pipe and also iron bands and wooden or iron connections for wooden pipe, consisting of elis, tees, crosses, reducers, bands, and eyes (weight of iron bands and iron connections not to exceed 20 per cent of the weight of the entire carload).....	10
[Pipe, wooden, water.....	20]
Planks. <i>See</i> Lumber.	
[Poles, curtain, turned but not further finished.....	15]
Poles, peeled, unpeeled, sawed or split, not further finished than turned, from woods of any kind, including such as:	
Bean.....	
Electric wire.....	
Furnace.....	
Fishpound.....	
Hoop.....	
Hop.....	
Power line.....	
Smelting.....	
Telegraph.....	
Telephone.....	
Poles, tent. <i>See</i> Tent stock.	
Poles, vehicle. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Poles, rug. <i>See</i> Cores.	
Porch work. <i>See</i> Millwork.	
Portiere work. <i>See</i> Millwork.	
Posts, peeled, unpeeled, sawed or split, not further finished than turned, from woods of any kind, including such as:	
Fence.....	
Grape.....	
Pit.....	
Vineyard.....	
Wooden, n. o. s.....	
Props, mine or mining. <i>See</i> Mine material.	
Pump or well tubing. <i>See</i> Tubing, pump or well.	
Rails. <i>See</i> Lumber; Millwork.	
Rails, fence. <i>See</i> Lumber.	
Rails, mine. <i>See</i> Mine material.	
Reaches. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Rim strips. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Rims, wagon wheel. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Risers. <i>See</i> Lumber; Millwork.	
(Rods, sucker, not further finished than sawed, planed, or turned, without attachments....	10
Rosettes. <i>See</i> Millwork.	
Rungs, ladder. <i>See</i> Ladder material.	
Sand boards. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Sash, k. d.....	Lumber.
Sash, s. u. <i>See</i> Millwork.	
Sawdust. <i>See</i> Waste.	
Screen doors. <i>See</i> Millwork.	
Screens, door and window, including wired. <i>See</i> Millwork.	
Scroll work. <i>See</i> Millwork.	
Shafts. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Shakes. <i>See</i> Shingles and shakes (sawn or split).	
Shavings. <i>See</i> Waste.	
Sheathing. <i>See</i> Lumber.	
Shelves, k. d. <i>See</i> Lumber; Millwork.	
Shingles and shakes, from woods of any kind.....	Lumber.
Shingle tow. <i>See</i> Waste.	
[Ship knees.....	Lumber.]
[Ship spars or spar timber.....	Lumber.]
Shooks, box. <i>See</i> Box and crate material.	
Siding. <i>See</i> Lumber.	
Silo material, consisting of staves, doors, and other wooden materials used in the construction of silos; and also door hangers, iron bands, hoops, lugs, bolts, and other iron or steel parts (the weight of the iron or steel articles not to exceed 20 per cent of the entire weight).....	10
Silo staves. <i>See</i> Lumber.	
Singletrees. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Slabs. <i>See</i> Waste.	
Slats. <i>See</i> Bed slats; Trunk slats.	
Sleigh wood. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Slides, tent. <i>See</i> Tent stock.	
Spar or spar timber. <i>See</i> Ship spar or spar timber.	
Spindles. <i>See</i> Millwork.	
Splints, match. <i>See</i> Match splints, strips, or blocks.	
Spokes. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Spoke timber. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Spools (for barbed wired), k. d.....	Lumber.
Stair work. <i>See</i> Millwork.	

Articles	Ratings.
Stakes, split, rough sawed or dressed, from woods of any kind ( <i>see also</i> Agricultural implement, sleigh, and vehicle material; Tent stock).....	Lumber.
Staves. <i>See</i> Cooperage stock; also cooling tower material, silo material, silo staves, tank material, and pipe material.	
Steps, pole.....	Lumber.
Stools, window. <i>See</i> Lumber.	
Store fronts. <i>See</i> Millwork.	
Strips. <i>See</i> Lumber; Match splints, strips, or blocks; Agricultural implement, sleigh, and vehicle material.	
Stulls. <i>See</i> Mine material.	
Stumps.....	Lumber.
Sucker rods. <i>See</i> Rods, sucker.	
Supports. <i>See</i> Mine material.	
Swaybars. <i>See</i> Agricultural implement, sleigh, and vehicle material.	
Tanks, closet, k. d.....	15
Tank material, consisting of staves and other wooden parts used in the construction of tanks or vats, and also iron or steel fixtures, including gauge, iron or steel bands or hoops and lugs (the weight of the iron or steel articles not to exceed 20 per cent of the weight of the entire carload).....	10
Telegraph and telephone cross arms. <i>See</i> Cross arms, telephone and telegraph.	
Tent stock, including keys (slides), pins or stakes, poles.....	Lumber.
Ties, sawed, split or hewn, including such as cross, switch, railroad, street railway and mine ties.....	Lumber.
Timber. <i>See</i> Lumber; Mine material.	
Timbers, spar. <i>See</i> Ship spar or spar timber.	
Tongues. <i>See</i> Agricultural implement, sleigh and vehicle material.	
Tow, shingle. <i>See</i> Waste.	
Treads. <i>See</i> Lumber; Millwork.	
Trunk slats.....	10
Turned work, entering into the construction of buildings. <i>See</i> Millwork.	
(Tubing, pump or well).....	Lumber.
Vat material, consisting of staves and other wooden parts used in the construction of vats. <i>See</i> Tank material.	
Vehicle material. <i>See</i> Agricultural implement, sleigh and vehicle material.	
Veneer, sliced, rotary cut or sawed, when figured, from wood of any kind.....	15
Veneer, sliced, rotary cut or sawed, unfigured.....	Lumber.
Wagon-box sideboards and bottoms. <i>See</i> Agricultural implement, sleigh and vehicle material.	
Wagon material. <i>See</i> Agricultural implement, sleigh and vehicle material.	
Wainscoting. <i>See</i> Lumber; Millwork.	
Washtub covers. <i>See</i> Covers, ice can and washtub.	
Waste from wood of any kind, consisting of slabs, sawdust, shavings, boughs, edgings, listings, hog product, kindling (manufactured from sawdust, pitch and turpentine drippings), shingle tow, broken lumber of miscellaneous widths and lengths and none as long as 10 feet (minimum weight for sawdust, shavings, boughs, and shingle tow 24,000 pounds).....	Lumber.
Wedges, mine. <i>See</i> Mine material.	
Well tubing. <i>See</i> Tubing, pump and well.	
Wheelbarrow material, sawed, planed, turned, bent, bored, mitered, tenoned, but not primed, painted, nor ironed.....	15
Whiffletrees. <i>See</i> Agricultural implement, sleigh and vehicle material.	
Window aprons, hoods, and stools. <i>See</i> Lumber.	
Window screens. <i>See</i> Millwork.	
Wood, built-up or combined. <i>See</i> Built-up wood.	

## WOODS OF VALUE.

Boxwood.	Ebony.	Lignum-vitæ.	Satinwood.
Spanish cedar.	Granadilla.	Mahogany.	Teakwood.
Cherry.	Ironwood.	Rosewood.	Vermillion.
Cocobolo.	Lancewood.	Sandalwood.	Walnut.

## DISPOSITION OF FRACTIONS.

In constructing rates on articles taking a percentage higher than lumber rates, the following rule should be observed:

Fractions less than  $\frac{1}{2}$  will be omitted.

Fractions  $\frac{1}{2}$  and over, and less than  $\frac{3}{4}$ , will be made  $\frac{1}{2}$ .

Fractions  $\frac{3}{4}$  and over will be advanced to 1 cent.

In this connection attention should be called to the rate relationships between lumber and such articles as logs, ties, bark, box material, box shooks, and the like. The contention is made that these articles should take lower rates than lumber and in many cases lower rates prevail at the present time. Our findings herein do not justify an increase in the rates on these articles. Thus, the movement of logs for long distances to veneer and furniture factories

is entirely distinct in character from the movement of logs for short distances to sawmills which produce lumber. The latter is generally in special logging trains on logging cars and under operating conditions entailing comparatively low costs. Rates for this service may properly be made lower and independently of rates on lumber.

Certain lumber rates are published under which no traffic moves and which are not fairly related to rates which do move the traffic. Where that is the case a strict observance of the relationships indicated may result in rates on lumber products too high for the service performed and it may be necessary pending a revision of such lumber rates to retain the present rates on the products by way of exception to the classification here indicated. However, the fact that there is no movement of lumber between two points is no justification for the permanent maintenance of rates out of line with the general adjustment. Paper rates serve no useful purpose. Thus, for instance, to Salt Lake City the rate on lumber from Clinton, Iowa, is 65.5 cents and on sash and doors 55 cents for a haul of 1,386 miles. From Bellingham, Wash., the rate on doors and lumber to Salt Lake City is 45 cents for a distance of 1,174 miles, and from Weed 37.5 cents for a distance of 954 miles. If the lumber rates stand where they are and the door rates are made 25 per cent higher than lumber from Clinton and 15 per cent higher from the Pacific coast points named, the Clinton rate will become 81.9 cents on doors, the Bellingham rate 51.75 cents, and the Weed rate 43.1 cents, which rates are entirely disproportionate to the differences in distances from these points to Salt Lake City.

#### POLES AND PILING TOO LONG FOR A SINGLE CAR.

From the north Pacific coast and the inland empire to eastern destinations poles and piling which are too long to be loaded on a single car take fir lumber rates plus 10 cents. Shippers of such poles and piling claim that the transportation characteristics of those articles are such as to entitle them to move on rates not higher than lumber rates whether one, two, or three cars are used, and particularly object to any addition to the lumber rate merely because two or more cars are required. From territories other than the north Pacific coast and the inland empire the rate per 100 pounds charged on poles, piling, and lumber moving in two or more cars is generally the same as the rate on those commodities moving in single carloads. Thus, for instance, from Montana points west there is no higher charge on two or more cars than on a single car. Southern cypress, chestnut, and southern cedar poles are handled from the south to northern markets in two or more cars at lumber

rates; also poles moving from points north of the border of the inland empire through the United States to points in Canada pay no higher charge per 100 pounds on two or three car shipments than on single-car shipments.

A large part of the lumber which moves from the inland empire moves in box cars, and the flat cars in which the poles and piling move are worth about 50 per cent of the value of an average box car. The loss and damage claims, it was testified, do not exceed 25 cents per car, whether the poles be shipped in single, double, or triple loads. Formerly cedar poles and piling paid 10 cents over the fir lumber rate, whether one, two, or three cars were used, but the carriers subsequently reduced the rates on single loads to the lumber basis.

A representative of the transcontinental lines gave the following example:

Using a 60,000-pound minimum for a single car, on lumber at a 50-cent rate, the carrier would receive earnings of \$300 per car. On two such cars the earnings would be \$600, and on three single cars the earnings would be \$900. Two cars loaded with poles requiring both cars for transportation would earn on a tariff minimum of 66,000 pounds, at 60 cents, \$396, or \$204 less than two single cars of lumber. On a triple load, with a minimum of 99,000 pounds, at a 60-cent rate, the earnings would be \$594, or \$306 less than the earnings on three single loads of lumber.

Counsel for the shippers call attention to the fact that in the example given the minimum of 60,000 pounds used for lumber is about 3,000 pounds higher than the average loading of lumber from the north coast, and that the actual loading of poles and piling in double and triple loads is a great deal higher than the minima of 66,000 pounds and 99,000 pounds. Furthermore, counsel say, the witness for the carriers concerned himself only with the revenue earned per car, whereas they claim the only fair test is the gross ton-mile revenue, and the following table derived from tables submitted by the witness showing actual shipments to the east and southeast via the Northern Pacific is offered to show the revenue on gross weight of load and cars of lumber as compared with revenue on double and triple loads of piles and piling:

Character of load.	Weights, in pounds.			Total revenue.	Revenue in cents per hundred pounds on gross weight.
	Net.	Tare.	Gross.		
Single lumber.....	57,000	35,000	92,000	\$270.00	30.9
Double poles.....	79,375	52,000	131,375	396.87	30.4
Double piling.....	84,403	52,000	136,403	422.01	31.0
Triple poles.....	125,100	78,000	203,100	635.50	30.7
Triple piling.....	133,900	78,000	211,900	669.50	31.7

52 I. C. C.

The above table shows that the revenue derived per 100 pounds on the gross weight hauled, including the weight of the car, of poles and piling in double and triple loads is as great as that derived from lumber in single carloads. In view of this fact the conclusion is justified that poles and piling from the north Pacific coast and the inland empire should take no higher rates than are contemporaneously applied on fir lumber. No finding is suggested with regard to the carload minima on double and triple carloads prevailing from these regions because the minima prevailing on lumber are likewise different from those prevailing elsewhere and no finding is contemplated with regard to the lumber minima.

The transcontinental carriers present the following criticism of the above table:

The obvious criticism of the table appearing on page 18 of the examiner's report is that it assumes all lumber to be loaded in box cars. Such, of course, is not the fact. Some of it is loaded on flat cars, and if the tare weight for a single load of lumber, instead of being taken to be 35,000 pounds, the weight of a box car, as in the table, were taken to be 28,000 pounds, the weight of a flat car, as in the case of poles and piling, the revenue per 100 pounds on gross weight hauled would be shown to be less on a double or single carload of poles or piling than on a single carload of lumber.

Doubtless the result would be different if the basis above suggested were followed, but, in view of the fact that the movement of lumber is predominatingly in box cars, the comparison made in the table should, in our opinion, be determinative.

The transcontinental lines also point out that our findings are contrary to the findings in *Pacific Coast Lumber Mfrs. Assn. v. N. P. Ry. Co.*, 16 I. C. C., 465, 467, where we refused to order rates on long timbers from the Pacific coast no higher than on lumber. Our findings in that case were based largely upon a showing in the record then before us that long timbers from the Pacific coast "meet with but very little active competition" whereas "fir and spruce lumber comes in direct and keen competition with ordinary lumber of other kinds and from other points of production." The instant record, however, discloses active competition between poles and piling from the Pacific coast with chestnut, cedar, and cypress poles produced in the southern states and in Pennsylvania and western New York, the rates on which are no higher than on lumber in single cars.

#### CONCLUSION.

Carriers should apply to the movement of the various articles above listed, rates not to exceed the commodity rates contemporaneously applied on lumber for the same movement, by more than the percentages indicated, and to the movement from the north Pacific  
52 I. C. C.

coast and the inland empire of long lumber, timbers, poles, and piling too long to be loaded on a single car rates which do not exceed their rates contemporaneously maintained on fir lumber in single carloads.

To avoid misunderstanding, we may add that the rate relationships of various commodities to lumber indicated herein are the maximum which should be applied as to such other commodities. As has already been said, commodity rates are generally regarded as designed to take care of particular movements. In making commodity rates, the rate-maker must observe the law which requires that rates shall be reasonable in and of themselves, and also reasonable by relation. It is in view of this latter consideration that we have indicated the maximum limit of departure which can not be transgressed without creating a violation of law. The fact that relationships have been indicated as maxima is not to be taken in and of itself as an invitation to readjust all rates to such maximum spread.

CLARK, *Commissioner*, concurring:

The incongruities and consequent undue prejudices that exist and have long existed in the carriers' schedules of rates on lumber and lumber products have often developed in cases before us. *Yellow Pine Sash, Door & Blind Mfrs. Assn. v. S. Ry. Co.*, 35 I. C. C., 150, and cases cited therein. We have often held that certain of the lumber products might properly take higher rates than lumber when fixed with definite relationship to the rates on lumber.

Carriers have for years recognized the propriety of so-called lumber lists, but no definite rule or consistent practice has been followed in determining which of the products should be included in such lists. In general the idea has been to include in the lumber list all of the products manufactured by a large plant served by a carrier. At the same time small manufacturers served by the same carrier and manufacturing a closely analogous product of lumber have been subjected to substantially higher rates. This investigation was undertaken in the hope that general uniformity might be established. A great deal of valuable information has been gathered in the hearings thereunder. General conditions of transportation and commerce have undergone sudden and violent changes since this investigation started, and neither the conditions nor the record justify the entry of an order fixing definitely the relationship between rates on lumber and lumber products for the whole country or for important sections of the country. The investigation has developed more fully the incongruities and inconsistencies of the existing schedules and the necessity for a substantial degree of uniformity if

52 I. C. C.

undue preference and prejudice and unjust discrimination are to be eliminated.

I think that the majority report should be and will be helpful in demonstrating the necessity for more uniformity and in progress in that direction. I do not think that car loading can be made the single or the controlling factor in establishing uniform relationships of the different commodities and harmony in the relationship of the rates thereon.

**MEYER, Commissioner,** concurring:

The record is so voluminous and the number of things discussed therein so large that the report of the majority, in which I concur, could not readily give detailed consideration to many of the questions raised by the minority in the dissenting opinion filed herein. I wish, therefore, briefly to indicate facts and arguments which, in my judgment, offset the lines of reasoning of the minority.

The minority report directs attention to a notice sent to all interested parties just before the hearing in this investigation, reading in part as follows:

The measure of the rates themselves is not involved. Testimony, therefore is not invited with regard to the reasonableness of present rates. \* \* \*

The announcement from which this quotation is taken was unanimously approved by the Commission before it was sent out. Every member of the Commission understood the difference between a rate and a classification rating. The purpose of the investigation was to establish rate relationships or ratings and not rates. This was perfectly understood by everybody at the hearing.

A rating prescribed as a part of a classification may make the rate on one commodity, say, 80 per cent of the rate on another commodity, so that if the rate on the latter is \$1 that on the former will be 80 cents; but whether the rate shall be \$1 or \$1.50 or some other figure is not determined when the rating is fixed. The logical outcome of the position taken by the minority in this respect is to deny the Commission all power to establish a classification without previous hearing on the rates which may be based upon such classification.

Among the parties interested in the lumber investigation were a number who believed that the rates which they were paying on lumber and lumber products were excessive, and they desired to introduce testimony bearing upon the reasonableness of these rates. It was apparent that to enter upon an investigation into the reasonableness of the rates on lumber and lumber products throughout the country in an investigation covering a country-wide classification of lumber and lumber products would be launching an impossible enterprise. This view led the Commission to issue the circular referred to.

52 I. C. C.



The volumes of our reports contain many cases in which articles were considered from a classification standpoint without reference to the rate. This was notably the case in the investigation concerning the *Western Classification*, 25 I. C. C., 442. If the minority view is sound we erred in everything we did in that investigation.

Under section 10 of the federal control act we have been conducting the most extensive investigation which the Commission has ever undertaken. It embraces the three great classifications consolidated. Even though we act, and are expected to act, only in an advisory capacity, the fact is we are dealing with ratings and other classification features and not with rates. It is almost unnecessary to say that no change can be made in rating without some resulting change in a rate or rates. A single change in rating may effect a change in thousands of rates. According to the position taken by the minority the pending classification investigation is an improper procedure.

To carry this illustration a little farther, let it be assumed that the Director General will promulgate as his official classification the consolidated book concerning which this investigation has been made. Let it be further assumed that various shipping interests throughout the United States will lodge a complaint against this consolidated classification. According to the view of the minority, we can not with propriety dispose of such complaints involving perhaps thousands of ratings and other classification features without simultaneously bringing in issue the rates. I do not deem it necessary to carry the illustration farther.

The minority report criticizes the establishment of maximum ratings only as distinguished from what may be termed absolute ratings and comments that this will give carriers too much latitude or freedom in fixing the relationships to lumber rates or rates on various lumber products. In another part of its report, however, the minority criticizes our lumber list as too inelastic, and by implication characterizes it as "arbitrary, mechanical, and rigid." Both of the preceding can not be true.

It should be borne in mind that the lumber list promulgated by the majority report contains no articles which are not "to-day frequently accorded by the carriers a rate relationship to lumber." The lumber list is therefore not an innovation but rather in large measure a standardization, upon a just and reasonable basis, of a practice now prevailing.

While, as stated in the minority report, no formal complaint may ever have been lodged against rates on a large proportion of the articles included by the majority in the lumber list, it is likewise true that the rate relationship to lumber of the vast majority of the

52 I. C. C.

articles included is the predominant rate relationship now maintained. It is incorrect to say that the majority report "authorizes radical changes in the rates" on these articles.

The minority report is inaccurate in its implication that the majority has attempted "to assimilate the varying circumstances and conditions affecting movement throughout the country of the felled tree, and most of what comes from it, and from this composite formulate a strait-jacket."

Early in its report the majority states:

The question of including in lumber lists such articles as furniture, vehicles, agricultural implements, and toys is not before us in this proceeding. The record contains no evidence as to their classification characteristics. We can not recognize as valid the inference which the carriers seek to draw that, because lumber is used in their manufacture, their inclusion in lumber lists must follow if certain of the articles here under consideration are thus included.

The lumber list contained in the majority report, like the lists now so generally found in lumber commodity tariffs, is in effect a classification of lumber and lumber products. No attempt is made to go beyond the practice now prevailing of providing lumber lists only in connection with lumber commodity rates. It is not proposed that the rate relationships indicated should obtain in connection with class as well as commodity rates on lumber. Official, southern, and western classifications will therefore remain intact, although inoperative with respect to lumber and lumber products, except in those instances largely confined to intraterritorial movements within official classification territory where lumber generally moves at class rates. However, no valid objection could be raised to the application of the proposed lumber list to class as well as commodity traffic in lumber.

Objection has been raised to the use of commodity rates as base rates for lumber lists, it being argued that commodity rates are "special rates presumably established on account of peculiar circumstances and conditions"; that they are compelled by competition, or are made to meet "the peculiar requirements of particular communities." These contentions would lead one to suppose that the movement of lumber and lumber products at commodity rates is the exception rather than the rule. The reverse is the case. That being true, it is entirely in accord with the view that commodity rates are "special rates" to attempt a "standardization of rate relationships, such as the classifications were intended to afford, upon a new basis different from that found in the existing classifications." In fact, that is exactly what the carriers have done in providing the lumber lists now in effect, and the action here taken by

the majority is designed merely to remove such inconsistencies in prevailing rate relationships and consequent inequalities as may have developed from the individual efforts of different carriers.

Reference is made in the minority report "to numerous decisions, dating almost as far back as its organization," wherein the Commission "has recognized the principles underlying commodity rates and the necessity of gauging their reasonableness and propriety by considerations that do not necessarily play a part in framing a classification." In answer it may be stated that the Commission has, in over a hundred formal decisions, fixed commodity rates by relationship to the rates on other commodities. If the proposal of the majority with regard to their relationship may be designated an effort to standardize "incongruous and refractory congeries of commodity rates" the same designations may be applied with greater propriety to the lumber lists which the carriers themselves have voluntarily made effective and which the minority desire to perpetuate with all their admitted "incongruous and refractory congeries."

It is contended by the minority that sufficient consideration has not been given to competitive influences. A reading of the majority report, however, shows that full consideration has been given to competition. It is there pointed out that the very fact that lumber lists have so generally been maintained shows that in the judgment of the carriers the disturbing factors of water, carrier, and market competition have not affected lumber products differently from lumber to a degree sufficient to make inexpedient or improper the maintenance of definite rate relationships.

Individual instances may undoubtedly be referred to where there is a large spread between highly competitive lumber rates and rates on certain of the articles which the majority includes in its lumber list. In such instances there may or may not be a movement of the products. However, generalizations such as those made in the minority report, where it is stated that the consideration of competition "is almost wholly neglected in the proposed report," and that the maintenance in connection with highly competitive lumber rates of the rate relationships indicated will "make serious inroads in the revenues of the carriers," are not justified, for they are not based upon a comprehensive survey of all rates on lumber and lumber products throughout the country. The existing lumber lists, voluntarily established by the carriers, are maintained in their most highly developed forms in connection with lumber rates between so-called highly competitive points. This certainly would not be the case were lumber affected differently by competition than the manufactured products under consideration. Thus, lumber lists are today provided in connection with lumber rates from the Mississippi

Valley and the southwest, to the Ohio and Mississippi river crossings and through those crossings to central freight association and trunk line territories, which rates, in cases before this Commission, carriers have repeatedly asserted to be strongly affected by water, carrier, and market competition. Whatever reductions in rates will result from the application of a lumber list in connection with all lumber commodity rates, will be confined to instances where the rates on the products now exceed, by an unreasonable amount, the less competitive rather than the more highly competitive lumber rates. This fact is concretely illustrated in the discussion in the majority report with regard to millwork, veneer, and built-up wood, which, of the lumber products here under consideration, are farthest removed from lumber.

It has been repeatedly asserted by carriers, in briefs and upon argument, that the examiner's report entirely ignored classification factors other than car loading and particularly value. The same objection is raised by the minority against the majority report. However, it is plainly evident from the majority report that, in arriving at the rate relationships indicated, all elements of classification were given careful consideration. As evidence hereof attention is called to the discussion in the body of the report concerning agricultural implements and vehicle material, millwork, veneer, and built-up wood and to the four appendixes where full data are given with respect to the comparative value of these and other articles and of lumber.

If two men are identical in appearance except for a shade of difference in the color of their hair, could it be truthfully said that in describing one as the "darker-haired" individual all other features had been ignored? That is the assertion of the minority.

The argument "that variations in value as between the different products of lumber have been unduly subordinated to the single factor of car loading" is urged particularly with respect to the rate relationship to lumber indicated for veneer. It is stated that "a carload of expensive veneer may not inappropriately bear a higher transportation tax than a similar carload of rough lumber." The majority differentiates between "expensive veneer" manufactured from figured woods or woods of value, accorded lumber rates plus 15 per cent, and ordinary veneer, which, on the basis of value as well as carloading, should not take rates higher than lumber. The value of veneer should not be compared alone with the value of rough lumber. All parties to this proceeding, the carriers included, are agreed that no differentiation in rates should be made between rough and dressed lumber or between different grades of lumber, but that all of the ordinary products of saw and planing mills should take lumber rates. The proper comparison, therefore, is between

the value of veneer and of all grades of lumber. This comparison is made by the majority both in the report proper and in appendices 2 and 4. The facts there given clearly show that no differentiation in rates should be made, on the basis of value, between veneer of different thicknesses or between veneer manufactured from ordinary woods and lumber. Moreover, as stated by the majority, the rate relationship indicated for lumber, veneer and built up wood are in consonance with the rate relationship now in effect and with that proposed by the carriers between ordinary lumber and lumber manufactured from woods of value. Universally, lumber manufactured from woods of value now takes 3 cents over lumber rates. The proposal made by the carriers is that such lumber should take rates 15 per cent higher than ordinary lumber. Both veneer and built-up wood are of less value and should therefore not take higher rates than lumber manufactured from woods of value.

The fact that at present no traffic moves on certain lumber rates is also given due consideration in the majority report. Such "paper rates," where they are out of line and not fairly related to rates upon which traffic does move, will have to be revised. That will be the case with respect to rates on lumber from St. Louis to the southwest, referred to by the minority. However, no hardship will result either to carriers or shippers if such lumber rates are revised in order to permit their use as reasonable base rates for a lumber list. No one knows when a shipment may be offered, but the rate should be published before a shipment is offered and even as paper rates unreasonable rates should not exist.

The assumption is evidently indulged in by the minority that under the findings of the majority, present lumber rates, unchanged in any respect, must necessarily be taken as base rates for the proposed lumber list. We are told that "before taking a given set of rates as the basis for other rates we should make sure that the basis itself is reasonable and proper." The majority, although convinced that, except for such paper rates as may prevail in isolated instances, the existing lumber rates would form a consistent basis for rate relationships, has proposed no finding which will require that the existing lumber rates should, without any change whatsoever, be used as base rates for the lumber list in all cases. Furthermore, many of the so-called base rates on lumber have been increased as a result of proceedings before us during recent years and their relationships subjected to careful investigation. Certainly these rates should be adapted to application under the findings of the majority herein without hardship to any carrier. I make no reference to the increased rates established by the Director General as a war measure.

Early in its report the majority states:

It was never contemplated to require the observance of present lumber rates as base rates in connection with any rate relationship or classification which might be prescribed, and under our findings herein carriers may provide the rate relationships indicated in connection with such reasonable base rates as they may believe necessary and justifiable.

The above quotation also shows the inconsistency of the following from the minority report:

If it be true, as it seems to be, that the findings of the majority will, if made effective, substantially reduce the earnings of the carriers, without any proof whatever of the unreasonableness of the present rates, it is a serious indictment of the conclusion reached. An interest much broader than the interest of the railroads makes extremely inadvisable at this time a serious impairment of the carriers' revenues. If we must have a wholesale revision of the lumber rates, obviously the fair thing to do, in the entire absence of any proof that present rates are unreasonable, is to make the readjustment in such a way that it will not seriously curtail the carriers' earnings.

It is not to be presumed, however, that wholesale reductions affecting a large volume of movement will necessarily result if the lumber list suggested by the majority is made effective. As already indicated, it is the most competitive lumber rates to which lumber products are to-day in large measure related, and the bulk of the movement of lumber products to-day is at rates no further removed from lumber rates than is provided in the majority report.

With the exceptions of millwork and possibly one or two other articles, the volume of movement of the lumber products included in the proposed lumber list is from the same producing regions and in the same direction as lumber, and the rate groupings should therefore be coincident with rate blankets maintained on lumber. The equal treatment of manufacturers of millwork located in different sections of the country, as will be pointed out later on, is dependent upon the maintenance of a close rate relationship to lumber, and therefore identity in groupings is required.

The minority report refers to some "anomalous conclusions" due to "the failure to fix and determine \* \* \* a definite line of demarcation coupled with the disregard of facts that have always been considered in rate making." It points out that boughs, kindling wood, sawdust, and shavings, all of which are waste products of saw and planing mills, are accorded lumber rates the same as knocked-down door frames, chair stock, knocked-down beehives, etc. The fact is that this constitutes the predominant rate relationship to-day, and in this respect the majority merely perpetuates what carriers had voluntarily brought into existence. By including these articles in the lumber list the publication of a rate for practically every possible movement is assured, and these articles are therefore

more likely to be used and not wasted than if their movement was dependent in each and every instance upon the publication of separate commodity rates. It may be that it would be well for the carriers to further encourage their movement by publishing rates lower than on lumber. There is nothing in the findings of the majority to prevent the establishment of lower rates. However, these commodities load much lighter than lumber, and carriers may on that account be justified in charging rates as high as on lumber except to the extent to which lower values and other valid considerations may dictate lower rates. The belief that this rate relationship is inconsistent and "anomalous" rests upon a desire for a "line of demarcation" which should be apparent to the eye rather than one which should embrace all essential transportation considerations. Similarly, the objection raised against a rating of lumber rates plus 25 per cent for turned columns manufactured in millworking establishments, while square columns manufactured in lumber mills are accorded lumber rates, indicates a failure to appreciate the underlying basis for this classification. Columns manufactured in lumber mills move together with other saw and planing mill products under comparatively heavy loading, whereas columns manufactured in millworking establishments, besides being of higher value, having been manufactured with more care and precision, are shipped, together with other millwork, under lighter loading than lumber, and herein lies the basis for the differentiation made.

It is pointed out that some of the articles under consideration, such as "axles, rims, shafts, singletrees, spokes, tongues, and whiffletrees," are not lumber; that they have been subjected to different processes and "can be used for but a single purpose," whereas ordinary lumber "is capable of serving eventually any one of numerous purposes." This fact, however, should have no bearing upon the inclusion of these articles in a lumber list or upon their rate relationship to lumber. The determinative considerations, which are fully set forth in the majority report, are that these articles are identical with lumber in classification and transportation characteristics, and therefore should take no higher rates. Not only is the rate relationship of agricultural implement material to lumber desirable, but it is necessary in order to permit competition with lumber manufacturers for stumpage. This is also attested by existing lumber lists published by carriers. In this connection attention may be called to the fact that, although much lumber is used for further manufacture, a large proportion, embracing such articles as astragals, balusters, casing, ceiling, flooring, guttering, and lath, now almost universally classified as lumber, is largely limited to definite uses and not adaptable to other purposes.

In the minority report it is argued that "if the rates on lumber products must bear a fixed relation to the rates on lumber, there is apparently no logical reason why the rates on" iron and steel articles should not similarly be definitely related to rates on pig iron, the rates on glucose, corn oil, corn meal, gluten feed, and dextrine to the rates on corn, and so on.

This does not bear analysis. It is true that, similarly to lumber and lumber products, the articles referred to are raw materials and their products. But it does not follow that because the distinguishing transportation characteristics between lumber and lumber products are such as to permit a constant rate relationship that this must necessarily also be true of all raw materials and the articles manufactured therefrom, unless they bear the same relationship. There is no evidence in the record showing this nor does the minority claim it can be adduced.

Reference has already been made to the fact that the freight rate has a direct bearing upon the possibility of manufacturers of agricultural-implement material competing for stumpage with manufacturers of lumber. Upon this point the following is stated in a brief filed on behalf of manufacturers of agricultural and vehicle material:

Plants manufacturing vehicle materials are found alongside the plants manufacturing lumber; in a great many instances the same plant manufactures ordinary lumber and implement and vehicle material as well. There is the keenest competition among manufacturers of vehicle material in the sale of their product and between these manufacturers and the manufacturers of ordinary lumber in the purchase of their timber or logs. The close interrelationship of these industries arises chiefly out of the following considerations:

The price of standing timber or logs of given quality at any point in the United States is determined by the rates of freight to the consuming markets. Obviously the manufacturer of vehicle material can not buy his stumpage for less money than the lumber manufacturer is willing to pay.

The manufacturer of vehicle material in Indiana, Ohio, or Kentucky pays the same price for his stumpage as the lumber manufacturer in those states. The lumber manufacturer in the south can pay, and does pay, for his stumpage a price which bears the same relation to the price of stumpage in Indiana, Ohio, and Kentucky as his freight rates bear to the freight rates from those states to the important consuming markets of the middle west.

It is obvious, therefore, that the manufacturer of vehicle material in the south, who is compelled to pay the same price for his logs as the southern lumber manufacturer, and who under this proposed classification would pay 10 per cent or 20 per cent higher rates to reach the consuming markets of the central west (70 per cent of the production of vehicles is within a radius of 300 miles of Chicago), would be at a serious handicap as compared with his competitors in the nearby producing territory of Indiana, Ohio, and Kentucky.

It is obvious that any change in the present classification would constitute a most serious handicap for the manufacturer of vehicle material located at a distance from the consuming markets.



Veneer, built-up wood, and lumber are frequently used for like purposes and come into direct competition. Manufacturers of millwork are located in every part of the country. All use lumber as their raw material. Unless the rates on millwork and lumber are so related as to reflect relative costs of transportation, undue prejudice is bound to result. These impelling reasons for a lumber list, the reality of which is attested by the fact that to-day the bulk of the transportation of lumber and lumber products is under lumber lists voluntarily established by the carriers, should not be brushed aside by referring to other commodities the rates on which may not necessarily be closely related.

The rate relationships herein indicated are found to be "the maximum limit of departure which can not be transgressed without creating a violation of law." I believe that the carriers in meeting the requirements of this report should observe the rate relationships indicated as the minimum as well as the maximum limit of departure unless sufficient grounds for a different course are clearly discernible. The need for such action is obvious, particularly with respect to the rate relationship of millwork and lumber from the Pacific coast; for just as the maintenance of rates on millwork from the Pacific coast which exceed lumber rates by more than 15 per cent will be unduly prejudicial to manufacturers there located, just so will rates which are less than 15 per cent over lumber rates be unduly prejudicial to middle western manufacturers of millwork. In that connection it should be emphasized that by establishing this rate relationship of millwork to lumber from the Pacific coast no attempt is made to equalize millworking plants in the middle west with plants located on the Pacific coast. The weight of the inbound raw material to middle western mills is as much as 30 per cent higher than the weight outbound of millwork produced from the same quantity of lumber by Pacific coast manufacturers. The advantage which accrues to the Pacific coast manufacturers due to this fact and the consequent disadvantage of middle western plants is one of geographical location. However, such disadvantage to middle western manufacturers as results from the fact that transcontinental carriers are willing to accept lower earnings on millwork from the Pacific coast than on lumber used as raw material for like products of middle western plants is one which this Commission may not permit.

The minority criticises our findings with regard to the rate relationship of lumber and spokes in the case of *Eastern Wheel Mfrs. Assn. v. A. & V. Ry. Co.*, 27 I. C. C., 370, decided June 17, 1913, by unanimous vote of the Commission as then constituted. The necessity for a consistent rate relationship of lumber and lumber products

52 I. C. C.

was also recognized in *Oklahoma Traffic Asso. v. A. & S. Ry. Co.*, 36 I. C. C., 329, decided unanimously on November 3, 1915, where we said at page 342:

We have held in a number of cases that manufactured products of lumber should take higher rates than lumber from and to the same points, and for the identical reasons now advanced by respondents, *Yellow Pine Sash, Door & Blind Mfrs. Asso. v. S. Ry. Co.*, 35 I. C. C., 150, and cases cited therein; also that the rates on the manufactured products should be related uniformly to the corresponding rates on lumber.

And page 343:

Different relationships between the rates on sash, doors, and blinds and on lumber from Shreveport and Oklahoma points to Texas than from St. Louis and the other competing points named are totally indefensible.

Other unanimous decisions of the Commission whereby a rate relationship of lumber products to lumber was established are: *Fullerton Powell Hardwood Lumber Co. v. V. & S. W. Ry. Co.*, 20 I. C. C., 86; *Oshkosh Traffic Asso. v. C. & N. W. Ry. Co.*, 21 I. C. C., 385; *Signor Tie Co. v. I. & G. N. R. R. Co.*, 21 I. C. C., 615; *National Pole Co. v. C., St. P., M. & O. Ry. Co.*, 22 I. C. C., 378; *Switzer Lumber Co. v. A. & M. R. R. Co.*, 22 I. C. C., 471; *California Pole & Piling Co. v. S. P. Co.*, 22 I. C. C., 507; *Kelly Plow Co. v. T. & P. Ry. Co.*, 26 I. C. C., 581; *Anson, Gilkey & Hurd Co. v. S. P. Co.*, 33 I. C. C., 332; *Fetterman Bowl & Column Mfg. Co. v. S. Ry. Co.*, 33 I. C. C., 514; *Yellow Pine Sash, Door & Blind Mfrs. Asso. v. S. Ry. Co.*, 35 I. C. C., 150; *Nashville Tie Co. v. L. & N. R. R. Co.*, 38 I. C. C., 689; *Bowie Lumber Co. v. M. L. & T. R. R. & S. S. Co.*, 39 I. C. C., 609; *Green & Son v. S. Ry. Co.*, 40 I. C. C., 157; *Powell-Myers Lumber Co. v. B. & O. S. W. R. R. Co.*, 41 I. C. C., 425; *Indianapolis Chamber of Commerce v. St. L. & S. F. R. R. Co.*, 42 I. C. C., 6; *Powell-Myers Lumber Co. v. L., H. & St. L. Ry. Co.*, 42 I. C. C., 245; *Southern Lumber & Mfg. Co. v. C., C. & St. L. Ry. Co.*, 43 I. C. C., 13; *Napanee Lumber & Mfg. Co. v. B. & O. S. W. R. R. Co.*, 43 I. C. C., 236; *Memphis Freight Bureau v. A. & V. Ry. Co.*, 45 I. C. C., 121; *Harmount v. L. & N. R. R. Co.*, 45 I. C. C., 162; *Daugherty, McKey & Co. v. A. C. L. R. R. Co.*, 45 I. C. C., 535; and *Houston Tie & Lumber Co. v. M. L. & T. R. R. & S. S. Co.*, 46 I. C. C., 469.

WOOLLEY, *Commissioner*, concurring:

In concurring with the majority report I desire to state in a general way my reasons for so doing.

In the first place, I can not state too strongly my view that the extent of our future national prosperity and development depends in large measure upon the policy adopted toward our railroads and that one of the most important steps to be taken is to put the rates and

52 I. C. C.

regulations affecting transportation, by land and by water, upon a more stable, a more uniform, and a more scientific basis; in fact, upon the most stable, uniform, and scientific basis possible. I am further of the opinion that it is the duty of this Commission not only to advocate whatever legislation it considers essential to the elimination of any preferences and injustices inherent in the present rate structure, but also to make the maximum progress to this end consistent with the spirit of the laws now on our statute books. I realize that in its past undertakings in this direction it has had to give weight to and in effect approve considerations which have made impracticable substantial uniformity even in the same section and that in its present undertakings it is probably not advisable to ignore altogether those same considerations, notwithstanding the provision of the federal control act which, in referring to rates initiated by the President, provides that—

In determining any question concerning any such rates, fares, charges, classifications, regulations, or practices or changes therein, the Interstate Commerce Commission shall give due consideration to the fact that the transportation systems are being operated under a unified and coordinated national control and not in competition.

It is undeniable that for many years the tendency has been toward uniformity, for while the theory behind the acts of Congress and of the several state legislatures has been that the maximum of transportation efficiency and of benefit to the people is to be secured through the fostering of competition between carriers, the actual forces have limited this competition. Years ago, although such action was contrary to the theory of the law, carriers were permitted as a practical necessity to agree upon rates, ratings, and relationships between commodities and between communities. In our special report of December 5, 1917, to the Congress we admitted that the effect of our findings and orders was to reduce competition, our language on this point being as follows:

Their past operations have been competitive, although since the Hepburn act, and especially since the Mann-Elkins act, the prescription by this Commission of reasonable maximum rates and charges for rail carriers subject to the act, and the exercise of its power to require abatement of unjust discrimination or undue prejudice, have in great degree restricted that competition to the field of service.

One of the most important steps in the progress toward uniformity was the establishment of the three major classifications, and we are now engaged in the most extensive investigation yet conducted by this body, the purpose of which is the consolidation of these classifications into one volume, with uniform descriptions and rules. The putting in of such a classification will further uniformity consid-

52 I. C. C.

erably, but as we have in effect two systems of rates, and as rates of the two kinds generally bear little relationship to each other we have to go much further if we are to secure any approach to uniformity of charges on the commodities which move in substantial volume on commodity rates. The reason for the establishment of commodity rates is that the considerations which governed the classification makers are not, under our present conditions of railroad transportation, controlling, either because the articles on which they apply can not bear the proportion of the transportation costs that the class to which they are assigned would place upon them or else because it has been found expedient to give lower rates in order that competition of carriers, by rail or by water, or of markets may be met. In this investigation we have a number of commodities, all made from the felled tree, which generally have been taken out of the classification and given commodity rates, and the question before us is whether these commodity rates can be related, by percentage or otherwise, with greater justice and less preference than now exists.

As I see it, while the fixing of a proper rate relationship between these different forest products may have the effect of further limiting competition between carriers, it is a step forward in a progress which inevitably must be made if the country is to develop its industries in a normal way, with as near an approach as may be practicable to justice and equality to all of its people. The evils threatened as a consequence of loss of elasticity will prove, I am convinced, only those temporary disturbances incident to any needed reform; and, especially now that we are entering a period of reconstruction and the principal carriers are under federal control, how much better not only for those manufacturing forest products and those using them in the various industries but also for the consumers, who in the end pay, that this great industry be put upon such a basis that it can proceed with confidence that there is to be a fair division of transportation costs between lumber and other forest products and that to this extent at least the rate question has been simplified and clarified. The manufacturer of agricultural implement or vehicle material or of mill work can then look to the demands for his products and the advisability of manufacturing them at a certain point without having to figure whether a greater advantage in freight rates enjoyed by the manufacturer of lumber, justified on the ground that there is stronger competition on lumber than on other products of the forest, makes it impossible for him to compete with the lumber manufacturer in the purchase of stumpage.

If each article manufactured from the felled tree pays its proper share of transportation costs as compared with the others the development of the industry will depend more upon sound economics

than upon the judgment of railroad managements in deciding whether or not the interests of their roads will be served best by the encouragement of one kind of traffic or another. In addition, the fixing of some fair relationship between the various commodities will remove any arbitrary restraints or preferences which in the past may have discouraged or encouraged the manufacture of a particular commodity at a point near the forests or near large consuming markets, and will make their location in the future more nearly dependent upon transportation economies. It seems apparent to me that when it appears that the relationship of freight rates on the various forest products is one of the principal elements in the determination whether material is to be used in the manufacture of any one of several commodities we should have no hesitation in proceeding to the removal of any undue preference or undue prejudice, and further that any doubt as to our authority to accomplish its removal is based upon an overtechnical construction of the law. If we are convinced that a substantially greater degree of fairness and equality than now exists is practicable, is not that a basis for a finding of undue prejudice?

It has been suggested that no general findings are necessary and that this body can remove whatever evils may exist by acting upon specific complaints brought before us. But that course has already been found unproductive of substantial results in connection with these very forest products, for we have already expressed the opinion in several cases that there should be definite and uniform relationships, and yet because of the limited records before us and the practical necessity that the relationships have some degree of uniformity we have hesitated to require the maintenance of relationships in such cases. It seems unquestionable that if any general change in the relationships of rates on commodities moving so extensively as forest products in every section of the country is demanded it can not be made piecemeal upon records covering specific rates, but must be based upon a thorough investigation of the conditions of the industry and of the transportation of the commodities throughout the entire country. We have had a thorough investigation with reference to forest products and even if we were to follow the original suggestion of the examiner and fix definite relationships between lumber and other forest products, rather than, as we are now doing, to indicate that the rates on certain products should not exceed the lumber rates or should not exceed them by more than certain percentages, I would not fear the result of any inelasticity, for in my opinion the result would be a substantial step toward giving each shipper the benefit of his location and making the industry free from what may be the selfish policy of particular carriers.

52 I. C. C.

It has also been pointed out that, by prescribing relationships between lumber and other forest products, we would be creating additional rate blankets, for from the southern lumber blanket, for instance, many forest products which now pay rates more nearly based on distance would take the same rates from all points within the blanket. This is true, and emphatically I do not favor the encouragement of the establishment of any additional blankets, but on the other hand I am of the opinion that the manufacturers of implement stock or of millwork are entitled to the benefit of any adjustment or relationship of rates enjoyed by the manufacturers of lumber and, upon proper procedure, we can remove any unreasonableness or unjust discrimination which the maintenance of any rate blankets may entail. Nor do I give great weight to the contention that the effect of the findings would be a depletion of the carriers' revenue, for it can not be assumed from the record that the carriers will be unable so to revise their rates, especially some of the higher ones upon which little or no traffic moves, as to bring about the relationships proposed without any great loss of revenue or that if, following the readjustment, it should appear that forest products generally are not bearing their proper share of transportation costs the carriers will be unable to secure substantial justice. To listen to these contentions would in my judgment be to refrain from action for fear the elimination of one evil may give rise to another.

I wish to state in conclusion that while I agree to the percentage basis proposed I am not convinced that it is the most scientific method possible. It is probably the best that it is practicable to devise at this time, but in the future, when it should be possible to make more satisfactory computations as to the cost of transportation, separating line-haul and terminal costs, it is not improbable that some greater degree of justice can be secured through the use of more scientific bases.

DANIELS, *Commissioner*, dissenting:

Lumber in official and southern classifications carries class ratings. In official classification it moves intraterritorially at sixth class, carloads. In southern classification the ratings are sixth class, l. c. l., and class A, c. l. In western classification lumber is rated fourth class, l. c. l., but the carload movements are at "lumber tariff rates." Except for the intraterritorial movement in official classification territory, lumber, in carloads, commonly moves upon commodity rates. Numerous products of lumber similarly move at commodity rates, often differentially related to the lumber rates either by percentages or by absolute amounts.

The majority report calls attention to the notice given the parties, outlining the character of evidence desired, to the effect that "the  
52 I. C. C.

measure of the rates themselves is not involved. Testimony is therefore not invited with regard to the reasonableness of present rates or the adequacy of the revenue at present derived from the transportation of lumber and lumber products."

Evidence proffered relating to the reasonableness of rates was excluded; and the report expressly attempts to fix only the relationship of rates upon lumber and its products. Despite the end that was in view, the fact that it is not equally possible to change the measure of lumber rates and rates upon lumber products inevitably results in confining the range of rates on the products to a relationship to lumber rates which are in fact not readily susceptible to change. To say that "carriers may provide the rate relationships indicated in connection with such reasonable base rates as they may believe necessary and justifiable" presupposes, contrary to the fact, that carriers may change at will all of their commodity rates on lumber, and wholly overlooks the compelling influences that have existed for years and that will continue to exist as long as carrier competes with carrier, producer with producer, and market with market.

The natural effect of the majority report will be to impress upon rates on lumber and forest products a rigidity entirely foreign to existing conditions and allowing no play for competitive conditions and other influences which may operate upon one article and not upon others, or in one region and not in another. For example, assuming that the rates on lumber and certain products between certain points should observe the relationships indicated as proper in the lumber list and that a sudden influx of lumber from Canada or Mexico should render it practically impossible for the American producers to market their lumber at the then existing rates, it would be unlawful under the majority report for the carriers to reduce their rates on lumber without making corresponding reductions in rates on the products, although the latter rates might be entirely reasonable and unaffected by the changed conditions. I can not believe that this is sound.

From time to time our attention has been called to disparities existing between rates on lumber and products of lumber, and where the record warranted it we have corrected undue disparities. It may fairly be said that there is no widespread and general dissatisfaction evinced at the present time by shippers or receivers of lumber or the products thereof. This is perhaps the more significant because in volume of tonnage lumber ranks among the five principal commodities transported by rail. Significance should also be attached to the fact that the majority report arbitrarily changes the rates on a large number of lumber products which have never been brought before this Commission upon complaint. The Commission's records

52 I. C. C.

show that of approximately 176 items in the lumber list in the majority report the Commission has never received a formal complaint relating to, and has never formally passed upon, the articles described in 103 items. Expressed in another way, no formal complaint has been lodged with this Commission against any rate in any part of the country on 60 per cent of the articles whose ratings it is proposed to change. It would seem to be clearly unwise to require or authorize radical changes in the rates on so many articles against which no complaint has been made and with which both the shipping public and the railroads are apparently satisfied. There is apparently no reason why the Commission can not deal with these matters in the future as it has done in the past, by correcting undue inequalities as they appear and deciding each question in the light of all the evidence presented.

It is proposed in the report to marshal the miscellaneous entries in the very numerous "lumber lists" of individual railroads into a new and uniform lumber list of national application, even to the extent of displacing the class basis now applicable upon the products of lumber within official classification territory. The basis of this new proposed uniform lumber list is the carload commodity rate on lumber, to which basis the rates upon a multiplicity of lumber products are to be quantitatively related. The rates on the products may not exceed the lumber rates, or may exceed them only within fixed mathematical limits varying from 5 to 25 per cent. Apparently the relation to the basic lumber rate is determined primarily, if not entirely, by the consideration of carloading, to the practical exclusion of all other factors generally considered in rate making, such as volume of movement, value, degree of fabrication, water competition, carrier or market competition, economic conditions of production, or other divergent considerations. Nor should it be overlooked that the relationship for certain products is based upon car loading in straight carloads, although the usual loading is together with lumber moving in mixed carloads. Any basis of rates established in disregard of these considerations will be unsatisfactory to the shipping public and to the railroads, will disrupt long-standing adjustments, will increase the advantage of some shippers and the disadvantage of others, will almost certainly result in great hardship and loss to some manufacturers, will be the occasion of numerous protests against the rigidity of the suggested adjustment and of petitions for relief therefrom, and will, in short, unnecessarily and arbitrarily disturb a situation that seems to have been reasonably satisfactory to all concerned.

Attention is directed to the incongruous and refractory congeries of commodity rates which it is designed to standardize in the present



report. In numerous decisions, dating almost as far back as its organization, the Commission has recognized the principles underlying commodity rates and the necessity of gauging their reasonableness and propriety by considerations that do not necessarily play a part in framing a classification. Thus the Commission has said that commodity rates are essentially exceptions to the classification "based upon a belief in the economic expediency of such course"; that they are special rates presumably established on account of peculiar circumstances and conditions; that the publication of a commodity rate takes the commodity out of the classification; that commodity rates are sometimes made to meet market competition; that so many elements enter into the determination of a commodity rate that it can not be said that it must always bear a fixed relation to the corresponding class rate; that in establishing commodity rates carriers frequently must take into consideration the peculiar requirements of particular communities; that commodity rates are special rates made to meet special conditions, and should not necessarily be disturbed because of a change in the class schedule; and that commodity rates are special rates which ought to be made with reference to all conditions surrounding transportation between the particular points. *Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329, 332; *Indianapolis Freight Bureau v. C., C. & St. L. Ry. Co.*, 15 I. C. C., 367, 369; *Same v. Same*, 16 I. C. C., 56, 70; *Columbia Chamber of Commerce v. S. Ry. Co.*, 28 I. C. C., 339, 345; *Decker & Sons v. C. M. & St. P. Ry. Co.*, 30 I. C. C., 547, 551; *Des Moines Commodity Rates*, 34 I. C. C., 281, 284; *Mississippi River Case*, 28 I. C. C., 47, 63, and 29 I. C. C., 530, 535.

It is hardly necessary to observe that to make the maximum rates on a certain lumber product a fixed percentage higher than the corresponding rates on lumber and to require the observance of that basis in all parts of the country ignores the fact that "commodity rates are special rates presumably established on account of peculiar circumstances and conditions"; that they are sometimes made to meet market competition; that many elements enter into the determination of commodity rates; that the peculiar requirements of particular communities are properly entitled to consideration; and that commodity rates are special rates made to meet special conditions. Commodity rates usually owe their origin not only to the fact that class rates are somewhat high to apply to the heavy movement of a given commodity, but because the class rates are too inelastic to accommodate the proper needs of individual shippers and communities. The majority report in this case would make commodity rates on much the same basis as class rates are made, intro-

ducing into the rate adjustment on lumber products the very element of inelasticity that induced their establishment. The Commission said in *In re Advances on Coal*, 22 I. C. C., 604:

The words "just and reasonable" imply the application of good judgment and fairness, of common sense, and a sense of justice to a given condition of facts. They are not fixed, unalterable, mathematical terms. Their meaning implies the exercise of judgment.

Within official classification territory lumber and the products of lumber move quite generally upon the classification basis. Elsewhere in the country many of the lumber products move on the class basis whether lumber so moves or not. It is our understanding that the majority report will not require, when lumber moves upon a class basis, the observance of the relationships therein indicated; but that wherever lumber itself moves upon a commodity rate the relationships stated are to be observed, thus displacing relationships now existing with a novel and untested system of relationships.

The situation presented is not one to be dealt with as a classification matter. Lumber and its products move in carloads on commodity rates rather than class rates, and the rates are the product of varying conditions, not susceptible of uniform treatment throughout the country. In brief, we are confronted with a rate problem and not one of classification. The drawing together under one list, called a lumber list, of these articles wherever they move in this broad land of ours, conflicts with the very object of classification—namely, the distribution of articles of commerce into logical commercial groups for the purpose of fairly distributing the cost of transportation.

There is merit in the suggestion made on behalf of the carriers that in a very real sense the work of the rate maker begins where the work of the classification maker ends. The latter endeavors to make a fair and reasonable classification or grouping of articles, based in large part upon their inherent nature and their value. In framing the western classification the classification maker rates passenger vehicles, set up, in less-than-carload quantities at two and one-half times first class, and when he comes to farm wagons, set up, gives them the same rating, not because they are devoted to the same uses as passenger vehicles, not because they are even in a remote sense competitive, not because the manufacturer of farm wagons must be placed, for commercial reasons, on the same competitive basis with manufacturers of passenger vehicles, but because it is the duty of the classification maker to place like articles in the same group, and he finds that farm wagons and passenger vehicles are not sufficiently dissimilar in their general characteristics to justify their assignment to different classes. When the classification maker reaches his conclusion he makes it effective in all parts of the territory under his

jurisdiction, regardless of commercial conditions, regardless of water competition, regardless of market competition, regardless of differences in transportation conditions; and properly so, because if farm wagons are like passenger vehicles in one place they are like passenger vehicles in another.

The rate maker is not guided, nor may he properly be guided, exclusively by general considerations of this character. He must make rates from A to B that will enable the manufacturer of farm wagons at A to market them in B. It may be that because of market competition or water competition the rate on farm wagons can not be made as high as that applicable on passenger vehicles. The rate maker must have a sensitive appreciation of commercial conditions and of changes therein; he must be reasonable and fair in his dealings with his patrons, which presupposes some understanding of their transportation needs; he must, while avoiding undue preference or advantage, cooperate with his patrons and at the same time safeguard the revenues of his company; he must study the effects of water competition and market competition; he must make different rates in one place from those effective in another if the conditions are dissimilar; and all of these things are likely to affect his conclusions. Above all things he must avoid making rates on such an arbitrary, mechanical, and rigid basis that they will stop the movement of traffic or injuriously affect the interests of his patrons. The difference between the province of the rate maker and that of the classification maker is so fundamental that I must register my disapproval of any attempt to make commodity rates throughout the country on a basis that seems to me to disregard many of the fundamental principles that have heretofore been recognized and followed.

Another consideration which is quite inadequately provided for in the proposed uniform lumber list is that of competition. It does not by any means follow that the competition from lumber-producing areas east and west of the Mississippi River, which focuses on Cairo and Thebes as gateways, is equally effective upon various products of lumber such as bent-chair stock moving from the same points of origin to the same gateways.

Still another essential consideration which is almost wholly neglected in the proposed report is the matter of carrier competition as affected by different methods of transportation. It would seem to be elementary that the rates on lumber should not be taken as the basis for rates on lumber products unless the lumber rates themselves are reasonable and proper. If the rates on a certain lumber product are made uniformly 15 per cent higher than the rate on lumber an indefensible adjustment may result. If the lumber rates

52 I. C. C.

are excessive the rates on the product will probably be excessive. If the lumber rates are depressed by competition, as many of them are known to be, the rates on the product will be depressed to the same extent. It may be true, and frequently is, that competitive influences have depressed the rates on lumber to an abnormally low level, but that no such influences have been or can be brought to bear upon the lumber-products rates. The latter may not be unreasonably high, yet the depression of the lumber rates makes a spread much greater than 15 per cent. To require the carriers in such a case to bring down the rates on lumber products to a basis only 15 per cent higher than the depressed lumber rates is on its face unfair; it may make serious inroads on the revenues of the carriers at a time when it is more than ever important, in the public interest, to protect those revenues; and it has the anomalous effect of arbitrarily injecting into the rates on lumber products a competitive element that has no existence in fact. Yet this will be, as I understand it, the effect of the majority report. Thus, from Washington and Oregon to various California points there is a sea-borne movement of lumber. There is also a sea movement of logs to some mills in southern California. If the lumber rate by rail is depressed, I see no warrant in reason for saying that the rates on millwork must be similarly depressed, or that they may not exceed the lumber rates by more than 15 per cent. Lumber from the southeast moving into trunk line territory often moves to the south Atlantic ports and then north by water. Carriers seeking to obtain the entire movement by rail must make concessions to the competitive rail-and-water rate. Millwork, for example, from the same vicinity does not move in any comparable degree by water.

I fail, therefore, to see why the depressed all-rail rates on lumber can be held to constitute a proper basis to which to tie down rigidly and permanently the rates on lumber products from the same territory of origin to the aforesaid destinations. Timbers in the course of their movement from southern Alabama to Pensacola, Fla., are frequently floated down waterways for a part of the journey. Similar movement is impossible for spokes or other products of lumber. It is, therefore, difficult to see why the rate on these lumber products between the two points in question must be identical with the rates upon lumber. These are but few of the striking illustrations that might be instanced showing the essential differences in transportation conditions attaching to lumber and the products thereof, but they suffice to indicate the impropriety of the forced and unnatural relationship decreed by the proposed report.

Before taking a given set of rates as the basis for other rates, we should make sure that the basis itself is reasonable and proper.

If all the lumber rates in the country were reasonable and properly aligned and if all the transportation and commercial considerations surrounding the movement of lumber products were relatively the same as those applicable to lumber, then we might be justified in establishing a fixed percentage relationship. But the lumber rates are in part paper rates. Some that actually move the traffic are doubtless too high, many are doubtless low, and as to their relative reasonableness the Commission is not advised on this record. Under these circumstances it seems to me to be manifestly improper and unsound to establish a fixed relationship between lumber and lumber products. In *Rates on Sash, Doors, and Blinds into Texas*, 26 I. C. C., 116, certain southwestern railroads proposed to increase the rates on sash, doors, and blinds from Louisiana stations to points in Texas. The carriers showed that the average value of these commodities "is about twice that of the lumber from which they are manufactured, and that they are more susceptible of damage." It was also shown that the rates on sash, doors, and blinds were lower than the lumber rates between the same points, and the carriers relied largely on that fact. But the Commission said, to quote from the report at page 118:

It will be seen that in support of the reasonableness of the advance respondents rely mainly upon the contention that the rate on sash, doors, and blinds should be higher than on lumber. This presupposes the reasonableness of the lumber rate, which is not here shown. We will therefore consider the reasonableness of the rate without relation to the lumber rate.

In the same case it appeared, according to the Commission's report therein, that the rate on sash, doors, and blinds from St. Louis to Texas common points was 3 cents lower than the rates on lumber, but the Commission observed that—

St. Louis draws its lumber supply largely from the Pacific coast, and the rate on sash, doors, and blinds was made as a result of the Pacific coast competition and without relation to the lumber rate.

Such competitive considerations are entirely ignored in the majority report, which is also in direct conflict with the principle laid down in the case last cited, namely, that we should not, in establishing rates on lumber products, presuppose the reasonableness of untested lumber rates.

If the rates on lumber products must bear a fixed relation to the rates on lumber, there is apparently no logical reason why the rates on iron and steel articles should not be definitely related to the rates on pig iron. By the same reasoning the rates on glucose, corn oil, corn meal, gluten feed, and dextrine should be made in fixed relation to the rates on corn. In *State of Iowa v. A. C. L. R. R. Co.*, 24 I. C. C., 134, the complainants attacked the rates on glucose from

Chicago to New York and asked the establishment of rates either on the basis of corn rates or 10 per cent higher. The Commission said:

But in all cases the rate actually fixed by the Commission on the particular commodity was the rate deemed by the Commission, under all the circumstances surrounding the traffic, to be the reasonable rate. And that is the extent of our authority under the law in dealing with the rate on the basis of its reasonableness. There is no rule that the manufactured product is entitled as a matter of right to the rate on the raw material from which it is made; and confusion would necessarily result from the rigid application of any such principle.

Thereupon the Commission established a rate on glucose which apparently was fixed without relation to the corn rate; and the report indicates that the Commission, in concluding to reduce the glucose rate, gave due consideration to the fact that manufacturers of glucose at New York could draw corn from Chicago at a rate 9 cents lower than the rate on glucose and that their advantage was "necessarily a substantial one." The rates on glucose involved in the case cited were allowed to be further increased in *Glucose from Chicago*, 36 I. C. C., 379, where we again referred to the inadvisability of according to the manufactured product the rates applicable on the raw material.

Nor do I find that I am able to subscribe to the "ratings" shown in the lumber list as set forth in the report. I find it difficult to ascertain from the report the precise basis other than carloading upon which the "ratings" have been determined. Upon principle it would seem improper, in classifying the various lumber products and fixing their "ratings," to require the railroads to apply lumber rates on articles distinctly more valuable than lumber and in an advanced stage of manufacture. In *Bulte Milling Co. v. C. & A. R. R. Co.*, 15 I. C. C., 351, 364, the Commission said:

It is a well-established principle of transportation as heretofore stated, that the rates on manufactured products ought generally to be higher than the rates on the raw material from which they are made.

I am inclined to think that where the processes of manufacture have proceeded to such a stage that the economic goal of the partially manufactured product is unchangeable, the product of lumber differs from ordinary lumber, which is capable of serving eventually any one of numerous purposes. Thus a club-turned spoke can be used for but a single purpose, whereas lumber sawed and planed is evidently capable of being used in a variety of ways. Axles, rims, shafts, singletrees, spokes, tongues, and whiffletrees, even if "not primed, painted, nor ironed," are not lumber. They may have been "sawed, planed, turned, bent, mitered, tenoned, and bored," but they must be hauled at lumber rates, according to the conclusions

of the majority, unless the paint or iron has been applied that will make them finished wagon parts. In my opinion it is necessary, if commodity rates on lumber are to be made on something akin to a classification basis, to determine as nearly as practicable a definite line of demarcation between articles taking the lumber rates and those taking a higher basis.

The failure to fix and determine such a definite line of demarcation coupled with the disregard of factors that have always been considered in rate making, leads to some anomalous conclusions. It is not practicable to discuss in this memorandum each of the items set out in the lumber list in the majority report, but a few instances will serve to make clear the point in question. Waste, frequently burned as worthless, and boughs are rated in the majority report the same as door frames, knocked down, with or without pulleys. Sawdust and shavings may take as high rates as sawed, planed, and turned chair stock. Kindling wood manufactured from sawdust, pitch, and turpentine drippings is placed on the same basis as bee-hives, knocked down. Not only are the same rates thus applied to articles differing widely in their value and stage of manufacture, but different rates are applied to articles of like value which are substantially similar from a transportation viewpoint. Thus, a solid column which has been sawed, resawed, passed lengthwise through a standard planing machine, and crosscut to length with ends matched, takes the lumber rates, but—if turned, for example—the rate is 25 per cent higher. If a log is run through the saws until it is a square column it can be shipped at the lumber rate, but if the same log is turned out round instead of square a rate of 25 per cent higher is authorized by the report of the majority; and a round column may take a rate of 25 per cent higher than a round pole.

On the Pacific coast lumber mills with millworking departments manufacture both square and round columns in the same establishment. These articles serve the same purpose, are of similar value, and are both sold on a board-measure basis, the same as lumber. The record shows nothing as to the relative carloading of turned columns as compared with lumber, and yet the long-existing mixture of these articles with each other and with lumber must be broken up.

We see no reason to distinguish the classification or rating of an article upon the ground that it is revolved against a set of knives rather than pushed against knives. Classification and rating should be based upon firmer ground. *Eastern Wheel Mfrs. Assn. v. A. & V. Ry. Co.*, 27 I. C. C., 370, 380.

Attention should also be called to the fact that the majority report may have the effect of creating rate blankets that do not now exist. Lumber may be produced in a certain section of the country, with mill-working establishments located at comparatively few points.

If the lumber blanket is coincident with the growth of timber, its continuance may be justified; *Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 33 I. C. C., 33, but there may be no like reason for the blanketing of rates on lumber products. It must be apparent that the majority report, by placing the products rates on the lumber basis or a percentage higher, may have the effect of artificially creating extensive rate blankets on lumber products, even if there is no transportation reason and no economic reason for doing so.

The southern carriers vigorously assert that the effect of the proposed findings will be "to substantially reduce many of the rates on these commodities—and this without any opportunity having been afforded the carriers in this proceeding to be heard on the measure of the rates and without any showing having been made that they are unreasonable." Lumber and its products perhaps yield more revenue to the southern railroads than any other commodity. It is not only the right but the duty of these carriers to look to the lumber list for a very substantial part of their income. If it be true, as it seems to be, that the findings of the majority will, if made effective, substantially reduce the earnings of the carriers without any proof whatever of the unreasonableness of the present rates, it is a serious indictment of the conclusions reached. An interest much broader than the interest of the railroads makes extremely inadvisable at this time a serious impairment of the carriers' revenues. If we must have a wholesale revision of the lumber rates obviously the fair thing to do, in the entire absence of any proof that present rates are unreasonable, is to make the readjustment in such a way that it will not seriously curtail the carriers' earnings.

I am also of the opinion that variation in value as between the different products of lumber has been unduly subordinated to the single factor of carloading. Thus a carload of expensive veneer may not inappropriately bear a higher transportation tax than a similar carload of rough lumber, or a carload of bent agricultural implement material may properly stand a higher charge than lumber sawed and planed. A fair reading of the majority report clearly indicates that the average loading per car of the several lumber products is given more weight than any other consideration; in fact, it may fairly be said that other considerations are either ignored or given inadequate weight. The report itself says that "the car loading of lumber and lumber products constitutes to a very considerable extent the determinative factor in the classification of these commodities." In my opinion the majority report lays entirely too much stress on the element of average loading and passes too lightly over other matters that have always been regarded as important in deter-



mining rate relationships. The mere fact that the loading of vehicle material and agricultural-implement material is not substantially different from the average loading of lumber does not, in my judgment, justify the application of lumber rates to these commodities if they have reached a stage in the process of manufacture where they are not only distinctly more valuable than lumber, but where they have proceeded so far toward their final form that they can not be used for any other purpose than that for which they were originally intended. This is true of practically all vehicle material and chair stock which must take lumber rates if the conclusions of the majority are made effective. It is interesting to note in this connection that certain of these so-called "lumber products," such as club-turned spokes, are not made from lumber at all, and are in no sense competitive with lumber. In view of this fact it is difficult to see upon what principle we can justify a policy of arbitrarily placing these commodities on the lumber basis.

In short, the common material relationship of lumber and its products to the tree in the forest may be of much less importance than their diverse economic relationship to their markets of destination. Thus lumber from the yellow-pine blanket may move to points in central freight association territory in competition with lumber from the northwest or the southeast; whereas millwork from the yellow-pine blanket may or may not encounter a similar degree of competition from the other territories of origin.

Our power under section 15 of the act to prescribe a rate to be observed for the future as a maximum or a classification to be adopted is predicated upon a finding, after full hearing, that the rate or classification to be superseded is "unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act." To my mind the sweeping statement that "We \* \* \* find existing lumber lists and classifications of lumber and lumber products to the extent to which they depart from the lumber list hereinafter indicated unjustly discriminatory" is not such a finding and, without condemning as violative of the act existing rates or ratings, the majority report indicates "the maximum limit of departure which can not be transgressed without creating a violation of law." To this I can in no wise give adherence.

It may well be questioned whether the majority report will bring about the uniformity which is apparently its chief object. Some carriers may adopt the suggestions and others may not. Some may increase the lumber rates to the basis of the products rates, while others may reduce the products rates to the basis of the lumber rates. Some may avail themselves of the maximum percentages approved

by the majority and others may not. One carrier may make the rates on cornice brackets lower than the lumber rates; another may make them the same as the lumber rates; another may make them 10 per cent higher than the lumber rates, another 15 per cent and another 20 per cent; and still another may avail itself of the maximum spread of 25 per cent; and none of these carriers would violate in any way the conclusions of the majority, which indicate only *maximum* ratings.

It is my opinion that the Commission should not at this time depart from the sound policy, developed through long experience, of gauging the reasonableness and the propriety of rates by taking into consideration all the circumstances surrounding the traffic. The majority report suggests a rule-of-thumb principle for making nationwide rates on lumber products without regard to transportation and commercial considerations and constitutes a distinct and, I believe, an unfortunate departure from the policy heretofore pursued. It is particularly unfortunate at a time when the lumber-products industry is facing a period of uncertainty. During the war the lumber industry devoted itself in large part to furnishing material for ship and cantonment construction and otherwise meeting the Nation's war need. The war need is now over, and the industry must adjust itself to peace conditions. The period of reconstruction is fraught with more or less uncertainty, due largely to changed conditions. Under these circumstances it is in my opinion peculiarly undesirable and untimely to foist upon the lumber-products trade a new and untried rate structure which can have no other effect than to add to the confusion and uncertainty already existing.

The report should deal with and correct such instances of undue prejudice or other unlawful discrimination as are disclosed upon the record, wherever they are shown to exist, and do so in the light of the circumstances and conditions attendant upon each as so disclosed. It should not attempt, as it does, to assimilate the varying circumstances and conditions affecting movement throughout the country of the felled tree, and most of what comes from it, and from this composite formulate a strait-jacket. In the absence of an order purporting to enforce the conclusions reached in the majority report I confine myself to the foregoing general expression of dissent.

I am authorized to state that CHAIRMAN AITCHISON and COMMISSIONER HALL join in this dissent.

EASTMAN, *Commissioner*, did not participate in the disposition of this proceeding.

52 L. C. C.

**APPENDIXES.**

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**APPENDIX 1.****AGRICULTURAL IMPLEMENT AND VEHICLE MATERIAL.**

The table that follows shows the present predominant rate relationship to lumber of the article included under this head, the rate relationship proposed by southern carriers upon the hearing and that proposed by them in briefs filed subsequently, and also all of the data contained in the record as to the value of the various articles listed.

52 I. C. C.

Articles.	Rate relationship to lumber.			Values per ton f. o. b. mill.				
	At present predominant.	Proposed by carriers upon the hearing.	Final proposal of carriers.	Average.	Lowest.	Highest.	Number of cars.	Source of information as to values.
<b>Articles:</b>	Lumber.....	Lumber.....	Lumber.....	\$11.06				Kittredge Exhibits 1 and 5; record, pp. 2676-2679.
Hewn hickory.....	do.....	do.....	do.....	14.00				Do.
Sawed.....	do.....	do.....	do.....	17.05	\$9.88	\$23.14	18	Evans Exhibit 1.
Hickory.....	do.....	do.....	do.....	17.56	13.71	20.49	6	Do.
Hard maple.....	do.....	do.....	do.....	13.80				Kittredge Exhibits 1 and 5; rec., p. 2704.
Bolsters, oak.....	do.....	do.....	do.....	13.80				Do.
Do.....	do.....	do.....	do.....	14.65	7.59	31.74	32	Kittredge Exhibit 1.
Doubletrees, oak.....	do.....	do.....	do.....	13.00-14.00				Evans Exhibit 1.
Beaches, oak.....	do.....	do.....	do.....	14.54				Kittredge Exhibit 1; record, p. 2678.
Slates, oak and hickory.....	do.....	do.....	do.....	5.45				Kittredge Exhibits 1 and 5.
Wagon-box boards:	do.....	do.....	do.....					Kittredge Exhibit 1; record, p. 2705.
Gum.....	do.....	do.....	do.....	12.22-14.44				Kittredge Exhibit 1; record, pp. 2705-2707.
Do.....	do.....	do.....	do.....	15.19	10.03	18.96	32	Evans Exhibit 1.
Cottonwood.....	do.....	do.....	do.....	20.00-25.70				Kittredge Exhibit 1; record, pp. 2708-2707.
Poplar.....	do.....	do.....	do.....	28.00-33.33	17.50	19.99	4	Do.
Apron slats, yellow pine.....	do.....	Lumber, plus 5 per cent.	do.....	19.01				Evans Exhibit 1.
Wagon bottoms, yellow pine.....	do.....	do.....	do.....	17.39				Record, pp. 2708-2709.
Do.....	do.....	do.....	do.....	21.16	16.61	25.38	6	Milling Exhibit 1.
Do.....	do.....	do.....	do.....	15.97	6.66	27.20	29	Evans Exhibit 1.
Falcons:	do.....	do.....	do.....					Kittredge Exhibit 1.
White oak.....	do.....	Lumber, plus 10 per cent.	Exclude from lumber list.	14.54				Kittredge Exhibit 1; record, pp. 2675-2680.
Oak.....	do.....	do.....	do.....	16.31				Answer of N. C. & St. L. to Interrogatories of Aug. 2, 1916.
Do.....	do.....	do.....	do.....	19.09	12.86	69.36	34	Evans Exhibit 1.
Hounds:	do.....	do.....	do.....					Kittredge Exhibits 1 and 5.
Oak.....	do.....	do.....	do.....	14.54				Do.
Oak and elm, bent.....	do.....	do.....	do.....	52.33	47.34	55.33	2	Evans Exhibit 1.
Peels:	do.....	do.....	do.....					Kittredge Exhibits 1 and 5.
Oak.....	do.....	do.....	do.....	15.64				Do.
Ash.....	do.....	do.....	do.....	18.70				Evans Exhibit 1.
Oak.....	do.....	do.....	do.....	15.36	4.43	21.31	26	Kittredge Exhibit 1; record pp. 2709-2710.
Sway bars, oak.....	do.....	do.....	do.....	14.54				Kittredge Exhibit 1; record pp. 2709-2710.
Hubs.....	Lumber, plus 3 cts.	Lumber, plus 20 per cent.	do.....	36.25				Kittredge Exhibit 5 (based on 40,000 pounds per car).
Hubs, oak.....	do.....	do.....	do.....	41.80	33.31	53.77	11	Evans Exhibit 1.
Hub blocks and hubs.....	do.....	do.....	do.....	22.70	7.40	35.20	10	H. A. Long Exhibit 1.
Hubs, birch.....	do.....	do.....	do.....	24.16	20.57	45.37	13	Evans Exhibit 1.

Articles.	Rate relationship to lumber.				Values per ton f. o. b. mill.			
	At present predominant.	Proposed by carriers upon the hearing.	Final proposal of carriers.		Average.	Lowest.	Highest.	Number of cars.
Neck yokes.....	Lumber, plus 30c.	Lumber, plus 20 per cent.	Excluded from lumber list.		\$35.00			
Neck yokes, hickory.....	do.	do.	do.		40.68	\$38.29	\$41.74	3
Rims.....	do.	do.	do.		45.00			
Rims, bent.....	do.	do.	do.		52.70	46.00	57.70	4
Rims, hickory, bent.....	do.	do.	do.		42.50			5
Rims, bent, oak.....	do.	do.	do.		32.00			5
Rims, bent, elm.....	do.	do.	do.		38.72	7.89	51.12	16
Singletrees.....	do.	do.	do.		25.00			1
Spokes:								
Club turned.....	do.	do.	do.		40.50	19.60	72.00	159
Do.....	do.	do.	do.		30.43			1
Club turned, hickory.....	do.	do.	do.					20
In the white.....	do.	do.	do.					
Hickory and oak.....	do.	do.	do.		63.00	47.00	81.00	9
Spokes, club turned, and hubs, hickory, oak, and birch.....	do.	do.	do.		61.85	41.97	91.80	11
Rim strips and felloes.....	do.	do.	do.		42.20	24.32	66.94	23
Hounds and sway bars, oak.....	do.	do.	do.		41.08	28.12	67.60	22
Axles, poles, reaches, etc., oak and hickory.....	do.	Lumber, plus 10 per cent.	do.		17.15	10.00	51.00	42
Hounds, sway bars, felloes, rims, and poles.....	do.	Lumber, plus 20 per cent.	Exclude from the list.		19.65	15.54	23.32	6
Vehicle material, rough mixed, oak.....	do.	do.	do.		12.22	10.08	12.88	6
Vehicle material, rough mixed, oak and hickory.....	do.	do.	do.					
Reaches, poles, sandboards, bolsters, cleats, bars, doubletrees, axles, brake beams, bounds, of hickory and oak.....	do.	do.	do.		35.76	19.13	66.16	14
Wagon-box boards, axles, doubletrees, bolsters, reaches, shaft bars, cleats, poles, stakes, brake beams, and sand boards of cottonwood, poplar, hickory, and oak.....	do.	do.	do.		11.37			9
	do.	do.	do.		17.54			20
	do.	do.	do.		11.39	9.40	13.69	6
	do.	do.	do.		31.09	8.29	45.80	86

Of the articles listed in the table, those which on the hearing the carriers proposed to accord lumber rates plus 20 per cent are of somewhat higher value than the preceding articles. Especially are spokes of higher value. But even the highest values of spokes are only slightly in excess of higher values of lumber referred to in Appendix 2.

That the car loading of agricultural implement and vehicle material is fully as great as of lumber is evidenced by the fact that the average car loading for 911 cars received by the International Harvester Corporation between September 1, 1912, and September 1, 1913, was 48,808 pounds.

52 I. C. C.

## APPENDIX 2.

## VALUES OF LUMBER AND LUMBER PRODUCTS.

In National Lumber Manufacturers' Association Exhibit No. 1 \$9.71 per ton is given as the average value for 77,806 cars of yellow-pine lumber shipped from southern mills during 1914 and \$15.43 per ton for 17,125 cars of lumber shipped in 1915 by mills located in various sections of the country and embracing woods of different species. For comparison with the values of lumber reference may be made to the values per ton as disclosed by the record of approximately \$50 for silos, \$85 for millwork, \$19.60 to \$91.80 for spokes, \$13.75 to \$102.39 for veneer, and from \$46 to \$156.90 for built-up wood.

Some conception of the variation in values of different forms of lumber can be gained from the table given below, which shows the high and low value per ton f. o. b. mill for carload shipments of various mills during the last 10 days of January, May, and September, 1915, with regard to which detailed information is given in National Lumber Manufacturers' Association Exhibit No. 1.

Shipper.	Point of origin.	Value per ton.	
		High.	Low.
The Kentucky Lumber Co.	Sulligent, Ala.	\$18.12	\$4.00
The Wisconsin Lumber Co.	Huttig, Ark.	22.94	3.66
McCloud River Lumber Co.	McCloud, Colo.	49.89	5.06
Standard Lumber Co.	Alton, Fla.	18.22	5.00
The Hibard Cypress Co.	Hibardville, Ga.	83.93	4.80
Dover Lumber Co.	Dover, Idaho.	31.29	7.06
The Kentucky Lumber Co.	Burnside, Ky.	24.85	4.20
Lyon Cypress Lumber Co.	Garyville, La.	37.49	3.60
Stearns Salt & Lumber Co.	Ludington, Mich.	32.36	4.15
Cloquet Lumber Co.	Cloquet, Mich.	40.54	6.66
Lamb-Fish Lumber Co.	Charlestown, Miss.	38.47	2.32
Himmelberger-Harrison Lumber Co.	Morehouse, Mo.	37.50	4.42
Libby Lumber Co.	Libby, Mont.	19.99	6.06
Ferley & Crockett	Black Mountain, N. C.	16.48	5.65
Oregon Lumber Co.	Baker, Oreg.	60.73	4.96
W. M. Ritta Lumber Co.	Colleton, S. C.	38.91	5.06
Camp Manufacturing Co.	Butterworth, Va.	17.75	4.71
St. Paul, Tacoma Lumber Co.	Tacoma, Wash.	21.94	4.19
Fosburgh Lumber Co.	Norfolk, W. Va.	19.91	5.63
Sawyer Goodman Co.	Marinette, Wis.	58.84	4.28

The figures given are the average values per ton for the particular carload shipments covered. It is therefore evident that some of the lumber shipped may have been even of greater value than is indicated above. The range of average carload values from \$2.82 to \$83.93 per ton not only includes the average values of millwork, spokes, silos, veneer, and built-up wood, but also largely covers the higher values of these articles when manufactured from ordinary woods. As indicating some of the more valuable forms of lumber with regard to which no question is raised as to the application of lumber rates, reference may be made to the average values f. o. b. mill of \$50.37 per ton for 20 cars of oak flooring and of \$46.70 per ton for 20 cars of poplar siding given in the answer of the Nashville, Chattanooga & St. Louis Railway Company to the Commission's interrogatories of August 2, 1915, and to the range of average values of from \$36.50 to \$35.80 per ton for different sizes and species of oak flooring and from \$31.30 to \$54.90 per ton for beech flooring shipped during 1915 given in Wellford Exhibit No. 9. The testimony shows that quarter-sawed oak runs as high in value as \$75 to \$150 per 1,000 feet, or from \$42 to \$84 per ton.

## APPENDIX B.

## THE CAR LOADING AND VALUE OF MILLWORK.

The record shows the following with regard to the average car loading and value of millwork from territories other than the Pacific coast:

Commodity and source of information.	Number of cars.	Average car loading (pounds).	Average value per ton f. o. b. mill.
Millwork shipped during 1915 from 8 Mississippi River plants to territories of destination indicated:			
Trunk line territory.....	180	30,086	.....
Central freight association territory.....	406	30,692	.....
Western trunk line territory.....	967	31,627	.....
Southeastern territory.....	42	30,088	.....
Trans-Missouri territory.....	44	31,299	.....
Southwestern territory.....	18	29,276	.....
Intermountain territory.....	29	29,578	.....
Shipments during 1914 from millwork factories, Wisconsin district, of the Wholesale Millwork Association, Clumpner's Exhibit No. 2:			
Doors, sash, molding, interior house trim millwork, built-up wood, and boxes.....	4,855	30,437	\$96.00
Millwork or interior house trim.....		38,000	75.55
Doors (straight carloads).....		27,083	89.72
Doors, sash, moldings, and other interior house trim (mixed carloads).....		27,382	81.24
Doors and millwork.....		36,000	80.55
Doors and sash.....		27,325	84.60
Sash (straight carloads).....			79.51
Compiled by Southern Weighing and Inspection Bureau, shipments of millwork, record, p. 3448.....	260	27,760	.....
Weighted average car loading.....	6,771	30,353	.....

In the north Pacific coast region the production of millwork is greater than in the other two divisions of Pacific coast producing territory. The facts as to car loading from this region, as disclosed by the record, are shown in the table below.

*Car loading of millwork and lumber from north Pacific coast.*

Commodity.	Time of movement during calendar year of—	Number of cars.	Average load (pounds).
Millwork:			
Doors, fir, average, record pp. 1460-1461.....			43,000
Doors, record, p. 850.....	1915	867	40,653
Sash and doors, record, p. 956.....	1915	33	38,440
Sash, k. d., record, p. 850.....	1915	1	52,490
Sash, k. d., average car loading of one shipper, record, p. 850.....			56,000
Doors to central freight association, southeastern and Canadian freight association territories, record, Docket 8131, p. 850; Donaldson Exhibit C, Docket 6490.....	1913	176	43,340
Doors to trunk line and New England territories, record, Docket 8131, p. 851; Donaldson Exhibit C, Docket 6490.....	1913	180	38,493
Doors from Tacoma and Hoquiam, Wash., to points east of the Mississippi River, via C., M. & St. P., Docket 6490, complainant's Exhibit 27.....	1913	124	42,826

Of the 180 cars for which this figure represents the average load 45 went to Chicago and loaded on the average 46,645 pounds per car, record, Docket 8131, p. 850; Donaldson Exhibit E, in Docket 6490.

52 I. C. C.



*Car loading of millwork and lumber from north Pacific coast—Continued.*

Commodity.	Time of movement during calendar year of—	Number of cars.	Average load (pounds).
<b>Millwork—Continued.</b>			
106 cars of doors, 10 cars of doors and columns, 2 cars of doors and sash, and 1 car of doors, sash, and frames, from Everett and Tacoma, Wash., to points on and east of the Mississippi River, via G. N. Ry., Docket 6490, complainant's Exhibit 28.....	1913	119	39,463
Sash and doors from Tacoma, Everett, and Hoquiam, Wash., and Astoria and Rainier, Oreg., to points in Colorado and as far east thereof as the Atlantic seaboard, via the O. W. R. & N. Co., Docket 6490, complainant's Exhibit 29.....	1913	181	43,312
Sash and doors from Albina and Kenton to points in Colorado and east via the O. W. R. & N. Co., Docket 6490, complainant's Exhibit 29.....	1913	17	39,006
<b>Mixed lumber and millwork:</b>			
Sash, doors, and lumber, record, p. 850.....	1915	690	44,080
Sash, doors, columns, molds, lumber, etc., from Tacoma, Wash., to points east of the Mississippi River, via the C. & M. & St. P., Docket 6490, complainant's Exhibit 27.....	1913	54	41,665
Doors, columns, and lumber from Everett and Tacoma, Wash., to points east of the Mississippi River, via the G. N. Ry., Docket 6490, complainant's Exhibit 28.....	1913	16	42,391
<b>Lumber:</b>			
Lumber, average from north Pacific coast, record, p. 848.....			57,000
Lumber, a large proportion dressed, record, p. 847.....	1915	3,147	58,000
Lumber, a large proportion rough, record, pp. 847, 848.....	1915	382	55,367
Lumber, a large proportion rough, record, pp. 847, 848.....	1915	1,221	56,487
Lumber, a large proportion rough, record, pp. 847, 848.....	1915	765	56,396
From Tacoma, Everett, and Hoquiam, Wash., and Astoria and Rainier, Oreg., to points in Colorado and as far east thereof as the Atlantic seaboard, via the O. W. R. & N. Co., Docket 6490, complainant's Exhibit 29.....	1913	1,040	59,663
Fir lumber received by millwork factories in Wisconsin, Clumpner Exhibit 1.....		93	53,351
			59,948

The predominant production in the north Pacific coast region is fir, and it was repeatedly emphasized upon the hearing that the doors and sash which move in considerable quantities from this region are manufactured from this kind of wood. From the figures given in the table and from the testimony offered in connection therewith it is fair to accept 57,000 pounds as the average car loading for fir lumber and 41,000 pounds for millwork.

The figures submitted upon the hearing as to car loading from California and Nevada points are, with a few exceptions not given separately, for lumber and lumber products. Larsson's Exhibit No. 8 shows that for 1,692 cars containing the products of pine mills in California, Nevada, and southern Oregon and shipped during the year 1913 from points not under loading restrictions, the average weight was 48,500 pounds. Larsson's Exhibit No. 9 gives statistics regarding a total of 9,145 carload shipments made by 41 representative redwood and pine mills, 35 located in California and Nevada, 4 in Oregon, and 2 in Arizona. The exhibit does not definitely show during what period of time the shipments were made. There are included shipments of all products of these mills, including besides lumber, sash, and doors, and also 1,646 cars of box material. The average car loading for the entire number of cars shipped, redwood and pine, is shown as 41,962 pounds, and the average per car of the loss and damage claims paid as 35.6 cents. For redwood only the average car loading was 42,686 pounds; for pine, including box material, 41,816 pounds, and excluding box material, 46,876 pounds.

Some indication of the average car loading of straight shipments of lumber from California is given by National Lumber Manufacturers Exhibit 1, which

52 I. C. C.

shows that for 11 cars of rough lumber shipped by the McCloud Lumber Company, of McCloud, Cal., during the last 10 days of January, May, and September, 1915, the average car loading was 47,963 pounds and 48,488 pounds for 17 cars of dressed lumber. The average car loading of 2,439 cars of western pine lumber received by millwork factories in Wisconsin during the calendar year 1914 is given in Clumpner's Exhibit 1 as 47,537 pounds, but it does not appear whether these shipments originated in California or the inland empire. It was testified by manufacturers located in California that the average car loading of pine and redwood doors is 38,000 pounds. From the information at hand as to the loading of north Pacific coast products it may be assumed that other items of millwork, such as open sash, would bring the average car loading for millwork down to about 36,000 pounds. Information based upon a substantial volume of movement is contained in Bostwick Exhibit 1 in Docket 6490, the *Anson, Gilkey & Hurd Co. Case*. This exhibit shows the number of cars and average load of sash, doors, and blinds and other products from California points which moved via the Southern Pacific during 1912 and 1913 and is summarized in the following table:

*Shipments of sash, doors, and blinds in straight and mixed carloads from California points via the Southern Pacific Company lines.*

Commodity.	1912		1913	
	Number of cars.	Average load (pounds).	Number of cars.	Average load (pounds).
<b>Millwork:</b>				
Doors.....	402	39,080	443	38,000
Doors and open sash.....	65	36,900	82	35,830
Sash, open.....	29	28,480	48	30,580
Sash, k. d.....	24	48,420	26	47,600
Sash, n. o. s.....			6	35,670
<b>Millwork mixed with lumber:</b>				
Doors, open sash and lumber.....	65	36,900		
Doors, sash, k. d., door stock, molding, lumber.....	40	41,700	57	36,540
<b>Lumber (only a few forms of lumber given):</b>				
Door stock.....	32	49,000	19	42,730
Sash stock.....	3	41,330	8	39,000

The predominant production in California and Nevada is pine and redwood. The above table substantiates the conclusion that for these species 36,000 and 46,000 pounds, respectively, fairly represent the average car loading of millwork and lumber.

The predominant production of lumber in the inland empire is pine. Fir, however, is also produced in considerable quantities. The production of millwork in this region is more limited than in the other two regions referred to. The record does not disclose figures as to the average car loading of millwork based upon any considerable volume of movement. It is fair to assume, however, that the relative car loading from this region will justify the same rate relationship as between millwork and lumber that has been found just and reasonable from the north Pacific coast and California.

52 I. C. C.

## APPENDIX 4.

## VALUE AND CAR LOADING OF VENEER AND BUILT-UP WOOD.

Considerable confusion in the record as to the value of different thicknesses of veneer arises from the fact that both the shippers and the carriers have argued from the standpoint of the value per 1,000 feet surface measure, which is generally accepted as the unit of sale. Obviously, however, since freight rates are based upon the weight of the articles transported, the proper comparison to make in determining the effect which value should have on freight rates is in terms of value per ton.

The following statement of the low and high value per ton of different thicknesses of veneer manufactured from several species of wood is contained in the answer of the Southeastern Veneer Association and the Southern Furniture Manufacturers' Association to the Commission's interrogatories of August 2, 1915:

*Value per 1,000 feet and per ton.*

Kind of lumber.	Value per 1,000 feet.		Value per ton.	
	Low.	High.	Low.	High.
1/4-inch poplar.....	\$6.49	\$13.00	\$18.50	\$37.10
1/4-inch poplar.....	5.55	11.00	22.40	41.80
1/4-inch poplar.....	4.50	8.25	25.32	46.30
1/4-inch poplar.....	3.76	5.50	38.70	56.72
1/4-inch poplar.....	3.16	4.00	39.50	50.00
1/4-inch poplar.....	2.75	3.25	39.10	46.10
1/4-inch poplar.....	2.65	3.10	44.20	51.66
1/4-inch poplar.....	2.78	3.00	48.35	52.20
1/4-inch gum.....	5.50	11.10	13.75	27.75
1/4-inch gum.....	4.72	9.35	15.73	31.13
1/4-inch gum.....	3.90	7.00	20.80	37.80
1/4-inch gum.....	3.25	4.70	29.25	42.15
1/4-inch gum.....	2.70	3.40	29.30	37.00
1/4-inch oak.....	8.00	22.00	14.55	40.00
1/4-inch oak.....	6.00	20.00	20.16	72.00
1/4-inch oak.....	3.50	11.50	16.5	86.7
1/4-inch oak.....	2.50	8.00	25.00	80.00

The above outlined materials seldom move in straight carloads, but the different thicknesses are usually shipped in mixed carloads. It is estimated that the average value of actual shipments per ton are as follows:

Lumber—	
Low.....	\$35.00
High.....	55.00

It will be observed that the low and high values per ton of the thinner cuts is generally somewhat greater than of the thicker cuts of veneer. The different thicknesses seldom move in straight carloads but are usually shipped in mixed carloads. The statement does not show weighted average values and it may be that the average value per ton of the annual production of thinner cuts is approximately the same, barring veneer made from woods of value, as the average value of the thicker cuts of veneer. Other statistics as to values contained in the record would tend to indicate this to

be the case. Solie Exhibit 1 covers 725 cars of veneer, shipped from seven plants located in Wisconsin and the upper peninsula of Michigan, including all shipments made during the year ended May 30, 1916. The average value per ton of 638 cars, which moved at lumber rates, was \$46.11, and of 87 cars, which moved at higher than lumber rates, \$35.55. Ryan Exhibit 1 shows that the average value per ton of 57 carloads of veneer less than one-eighth inch in thickness shipped during the same period from five plants in southeastern territory was \$43.42, and of 45 cars one-eighth inch and over in thickness only \$36.92. The following statement is compiled from Townshend's Exhibits 1 to 4, inclusive, and shows the value per ton of shipments of veneer of different species of wood and of different thicknesses made during January, May, and September, 1915, by two plants in Arkansas, one in Kentucky, and one in Maine:

52 I. C. C.

Value per ton of shipments of veneer made during January, May, and September, 1916.

Shipper.	Location	½ inch and over ½ inch thick				Under ½ inch thick.			
		Species	Number of cars.	Thickness.	Average value per ton l. o. b. mill.	Species	Number of cars.	Thickness.	Average value per ton l. o. b. mill.
Peard, Jordan & McCowen.....	Hesena, Ark.....	Gum.....	2	1	22.43	Gum.....	1	1	24.60
		do.....	1	1	44.42	do.....	1	1	20.74
		do.....	1	1	30.86	Oak.....	1	1	19.56
		do.....	2	1	37.72				
		Gum and pine.....	1	1	31.07				
		Gum, oak, and pine.....	1	1	43.61				
		Oak and pine.....	1	1	53.16				
		Oak.....	1	1	102.30				
		Poplar, oak, and cotton wood.....	1	1	54.07				
		Poplar.....	1	1	35.67				
Chicago Veneer Co.....	Harwood, Ark.....	Gum.....	0	1	33.72	Gum.....	1	1	26.44
		do.....	1	1	37.07				
		do.....	1	1	33.33				
		do.....	1	1	30.43				
		do.....	1	1	34.70				
		do.....	1	1	28.10				
		do.....	2	1	21.48				
		do.....	1	1	25.64				
		do.....	1	1	33.31				
		do.....	1	1	31.72				
Do.....	Burnside, Ky.....	Pine and gum.....	1	1	63.53				
		Cypress.....	1	1	63.41				
		Oak.....	1	1	45.73	Oak and poplar.....	1	1	19.97
		Oak and poplar.....	1	1	44.06	Poplar.....	1	1	74.41
		Oak, poplar, and pine.....	1	1	53.30	do.....	1	1	10.34
		Oak and pine.....	1	1	33.46	do.....	1	1	13.46
		Poplar.....	4	2	43.72	Poplar.....	1	1	14.88
		do.....	1	1	47.26	do.....	1	1	71.23
		do.....	1	1	34.30	do.....	1	1	26.46
		do.....	1	1	37.07	Hardwood.....	1	1	26.46
		Pine.....	1	1	37.07				

Standard Veneer Co.....	Houlton, Me.....	Birch.....	1	26.26 24.74	Birch.....	1	22.45 18.23 18.23 24.21 17.93 26.87 16.05 27.20 28.55
		do.....	1		do.....	1	
		do.....	1		do.....	2	
		do.....	1		do.....	3	
		do.....	1		do.....	4	
		do.....	1		do.....	1	
		do.....	1		do.....	1	
		do.....	1		do.....	1	
		do.....	1		do.....	1	

<sup>1</sup>Contains some veneer one-eighth inch thick.

<sup>2</sup>Contains some veneer under one-eighth inch thick.

Although this exhibit can not be taken as illustrative of the values of all thicknesses of veneer, it will be observed that as to those shown, the range of values per ton is as great for cuts over as for cuts under one-eighth inch thick. The exhibit substantiates the assertion that veneer from different species of wood and of different thicknesses frequently moves in mixed carloads.

That certain veneers are of comparatively high value can not be questioned. But it is also a fact that the great bulk of the production of veneers comes well within the range of values of lumber referred to in Appendix 2, *supra*. This is indicated by the values given above and also by the fact that by far the larger portion of the production is from the cheaper woods. Thus it is shown that the principal species of domestic wood consumed in the production of veneer in 1911 and the amount of each in M feet, log scale, was: Red gum, 186,542; white oak, 41,742; yellow pine, 35,400; cottonwood, 34,911; maple, yellow poplar, and birch, 24,000 to 30,000 each; tupelo, elm, beech, and basswood, 11,000 to 21,000 each. Other species of which more than 1,500 M feet and less than 10,000 M feet were used were red oak, spruce, Douglas fir, hemlock, walnut, ash, sycamore, and chestnut. The consumption of all other domestic woods amounted to 2,113 M feet. During the same period there was a total consumption of 11,695 M feet of imported woods in the production of veneer. Spanish cedar and mahogany constituted over 85 per cent of that amount. The figures given above are taken from a bulletin of the Census Bureau which was filed in evidence and which also contains the following:

\* \* \* Some of the favorite woods used are species that have not proven as serviceable for lumber as for veneer. The growing tendency to market commodities, including fruits and vegetables, in light-weight packages, such as berry cups, fruit baskets, tins, and veneer boxes and barrels, has opened a wide field for shaved lumber. This use is now thoroughly established, and its rapid increase seems a certainty.

Red gum was the principal veneer wood cut. In no year did it constitute less than 80 per cent of the total of the domestic woods. In 1910 it reached its highest mark, a little over 84 per cent, which was more than the combined amounts of any other four woods reported. The use of this wood has probably been the prime factor in bringing the veneer industry to the degree of importance it has attained. The fact that red gum is considerably better adapted than most other woods for cutting into thin sheets by the rotary process, the cheapness of stumpage, due to its abundant stands, and the high percentage of trees with straight trunks large in diameter and symmetrically round, have given it the distinction of being the ideal veneer wood. The widening range of uses for veneer and the fact that red gum serves for many of these uses, alike where cheap or expensive material is demanded, are other factors that have put this wood in the lead.

\* \* \* Like red gum and tupelo, but to a less extent, cottonwood was considered of little value, owing to its tendency to twist and warp, until called for as a veneer wood. In built-up lumber it serves with other softwoods for the middle layer, usually called the core.

While some of the cheaper woods produce veneer of considerable value the larger portion consists of the less valuable cuts. Thus it was testified that taking the ordinary gum log about 25 per cent is cut into higher grade face veneers, 35 per cent can be used for backing, and about 40 per cent for centers. The witness testified, but not with reference to any particular species of wood, that the low-grade veneer obtained from a log would run about 65 per cent and the high grade possibly 35 per cent.

52 I. C. C.

The car loading of veneer is shown by the record as follows:

*Car loading of veneer.*

Source of information.	Number of cars.	Average car loading (pounds).
Selle Exhibit 1—Shipments from Wisconsin and Michigan mills during year ended May 30, 1916.....	725	45,683
Ryan Exhibit 1—Shipments from 6 plants in southeastern territory during year ended June 1, 1916.....	110	41,387
Clumpner Exhibit 1:		
Oak, $\frac{1}{2}$ inch thick.....	25	46,550
Oak veneer.....	63	41,400
Birch, $\frac{1}{2}$ inch thick.....	16	55,365
Birch veneer.....	72	48,388
Oak, $\frac{1}{2}$ inch thick.....	3	40,600
Pine, $\frac{1}{2}$ inch thick.....	8	55,460
Gum, $\frac{1}{2}$ inch thick.....	1	46,290
Gum veneers.....	9	56,500
Townshend Exhibit 1—Shipments for January, May, and September, 1915:		
From—		
Helena, Ark.....	15	42,830
Clarendon, Ark.....	23	47,000
Burnside, Ky.....	23	40,822
Houlton, Me.....	15	56,776
Movements from North Augusta, S. C., via Southern Railway, record, pp. 3500-3510.....	41	36,096

Veneer is a raw material for built-up wood. It is therefore natural that the value of the latter should be greater than that of the former. The answer filed by the Southeastern Veneer Association and the Southern Furniture Manufacturers Association to the Commission's interrogatories of August 1, 1915, shows the following as the range in value of built-up or compound wood:

Compound or built-up lumber.	Value per 1,000 feet, surface measure.		Value per ton.	
	Low.	High.	Low.	High.
$\frac{1}{2}$ -inch poplar.....	\$15.00	\$25.00	\$66.00	\$111.10
$\frac{1}{2}$ -inch poplar.....	25.00	30.00	60.60	72.70
$\frac{1}{2}$ -inch poplar.....	30.00	50.00	48.00	80.00
$\frac{1}{2}$ -inch poplar.....	35.00	55.00	48.00	76.50
$\frac{1}{2}$ -inch poplar.....	38.00	60.00	46.00	72.70
$\frac{1}{2}$ -inch plain oak.....	31.50	36.00	75.00	85.70
$\frac{1}{2}$ -inch quartered oak, cut.....	45.00	58.50	105.80	137.60
$\frac{1}{2}$ -inch quartered oak, sawn.....	54.00	67.50	125.50	155.90
$\frac{1}{2}$ -inch mahogany.....	40.50	54.00	108.00	144.00

The above-outlined materials seldom move in straight carloads, but the different thicknesses are usually shipped in mixed carloads. It is estimated that the average value of actual shipments per ton is as follows:

Compound lumber:

    Low.....\$48.00

    High.....63.00

52 L. C. C.



Other data as to the value and car loading of built-up wood disclosed by the record are summarized in the following table:

*Value and car loading of built-up wood.*

Shipments listed.	Number of cars.	Average value per ton.	Car loading (pounds).
Solis Exhibit 1—Shipments from Wisconsin and Michigan plants during year ended May 30, 1916.....	61	\$67.19	39,915
Ryan Exhibit 2—Shipments from 5 mills in southeastern territory during year ended June 1, 1916.....	71	53.56	44,413
Sheppard Exhibit 1; record, pp. 3929-3931—Shipments from Cedar, Miss., via the Illinois Central during year ended Aug. 31, 1915.....	28	.....	34,360
Sheppard Exhibit 1; record, pp. 3929-3931—Shipments from Memphis, Tenn., via Illinois Central during year ended Aug. 31, 1915...	30	.....	40,376
Sheppard Exhibit 6, I. & S. Docket 701, brief of southern lines in Docket 8131, p. 191—Shipments from Memphis, Tenn., via Illinois Central during the period from Sept. 1, 1914, to July 8, 1916.....	49	.....	41,383

52 I. C. C.

No. 4844.  
IN THE MATTER OF BILLS OF LADING.

*Submitted December 7, 1918. Decided April 14, 1919.*

Pursuant to an order of investigation instituted by the Commission upon its own motion and after due hearing and inquiry into the general subject of the form and substance of bills of lading, and of the practices of carriers in respect to the issuance, transfer, and surrender thereof, and upon consideration of all the facts of record and of the common law affecting bills of lading, its modification by federal statutory law, and the duties and powers of the Commission thereunder;

*Held:* With respect to domestic traffic moving in interstate commerce:

1. That the numerous complaints made to the Commission in the past alleging unfair and varying practices of carriers in the interpretation and application of the rules and regulations contained in their present bills of lading; the great importance of the bill of lading, not only in transportation usage, but as an assignable and negotiable instrument in commercial transactions and the uncertainties in which shippers, carriers, and other interested parties frequently find themselves involved respecting questions arising in connection with bills of lading, have made it imperative that the Commission take appropriate action for the purpose of formulating and prescribing uniform bills of lading.
2. That the Commission has authority in a proper proceeding under the law to require carriers subject to the act to regulate commerce to comply with the provisions of the law respecting the issuance of bills of lading; to file with it the rules and regulations which they write into their bills of lading; to require that uniform rules and regulations be adopted by them; and to determine what are reasonable and nondiscriminatory rules and regulations.
3. That with respect to the application of the Cummins amendment to the act to regulate commerce, property transported by carriers subject thereto may be put into three classes: (a) "ordinary live stock" as to which no limitation of liability whatsoever is lawful; (b) property, other than ordinary live stock, concerning which the carrier may upon proper authorization, obtained from the Commission, be permitted to contract for a limitation of the measure of its liability, that is, of the amount of recovery; (c) property, other than ordinary live stock, as to which the carrier has not obtained authorization to contract for a limitation of its liability and as to which, therefore, no limitation of liability is lawful.
4. Various findings in conformity with this interpretation of the law made in respect of the proposed rules and regulations and a form of bill of lading designated and described as Appendix B, applicable to domestic shipments moving in interstate commerce prescribed for use upon all lines subject to the act to regulate commerce;

*Held:* With respect to questions affecting export traffic, and with respect to those involving the issuance and use of bills of lading applicable to the transportation of shipments from a point in the United States to a point in a nonadjacent foreign country:

1. That the transportation of traffic from an inland point in the United States to a port of export, for export, is subject to all the provisions of section 1 of the act, even though the transportation to the port is performed wholly within the confines of the state in which it originates, and whether the traffic be carried on local or through bills of lading.
2. That the Cummins amendment does not apply to traffic to a nonadjacent foreign country.
3. That while the Commission's authority over bills of lading to nonadjacent foreign countries is more limited and attaches more indirectly than in case of bills covering domestic interstate traffic, or traffic to an adjacent foreign country, it nevertheless does have authority over the rules, regulations, and practices of inland carriers subject to the act to regulate commerce, when, and if, they join in through bills of lading to nonadjacent foreign countries, and it requires such rules and regulations to be published and filed.
4. A form of bill of lading which the Commission finds would be just, reasonable, and lawful to be used upon the lines of all carriers subject to the act to regulate commerce on export traffic to nonadjacent foreign countries prescribed, and referred to and designated in the report as Appendix D.

*Walker D. Hines*, Director General of Railroads.

*R. Walton Moore* for southern lines; *W. A. Colston* and *E. S. Jouett* for Louisville & Nashville Railroad Company; *Henry Wolf Bickel* for Pennsylvania Railroad Company, its affiliated lines, and Uniform Bill of Lading Committee; *A. P. Burgwin* for Pennsylvania lines west of Pittsburgh; *George F. Brownell* for uniform bill of lading committee of railroads in official classification territory, trunk line railroads, and Erie Railroad Company; *Henry G. Herbel* and *F. G. Wright* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company; *T. J. Norton* and *J. L. Coleman* for Atchison, Topeka & Santa Fe Railway Company; *F. A. Farnham* for New York, New Haven & Hartford Railroad Company; *Daniel H. Hayne* for certain rail and water interests south of the Ohio and east of the Mississippi rivers, and certain coastwise interests; *A. A. Hoeling, jr.*, for Southern Pacific Company, Sunset Central Companies, and Arizona Eastern Railroad Company; *Fred H. Wood* for Southern Pacific Sunset lines; *J. S. Hershey* for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company; *G. Waterhouse* for Norfolk & Western Railway Company; *H. A. Taylor* for Erie Railroad Company and Uniform Bill of Lading Committee; *George B. Elliott* for Atlantic Coast Line Railroad Company; *James F. Wright* for Seaboard Air Line Railway Company; *William Mann* for New York Central lines; *Theodore W. Reath* for Norfolk & Western Railway Company; *Evans Brown* for Washington & Norfolk Steamboat Company; *C. H. Pearson* for Alabama Great Southern Railroad; *C. C. Wright* and *R. H. Widdicombe* for Chicago & North Western Railway Company and Western Trunk Line Committee; *R. B. Scott* for Western Trunk Line Committee and Chicago, Burlington & Quincy Railroad Com-

pany; *F. C. Baird* for Bessemer & Lake Erie Railroad Company; *George E. Wicks* for Bangor & Aroostook Railroad Company; *Allan P. Matthew* for Western Pacific Railway, and its receivers; *C. P. Northrop* and *Alex M. Bull* for Southern Railway Company; *A. H. McKnight* for Missouri, Kansas & Texas Railway Company, and its receivers; *Alexander R. Lawton, jr.*, for Central of Georgia Railway Company and Ocean Steamship Company; *O. E. Butterfield* for railroads in official classification territory; *W. S. Bronson* for Chesapeake & Ohio Railway Company; *R. F. Kelley* for Wheeling & Lake Erie Railroad Company; *George W. Towle* for Pacific Coast Steamship Company; *R. B. Scott*, *Fred H. Wood*, *H. M. Adams*, *T. J. Norton*, *H. A. Scandrett*, and *Charles Donnelly* for Western Classification Committee lines; *J. L. Coleman*, *Wallace T. Hughes*, *C. S. Jefferson*, *R. B. Scott*, and *Robert H. Widdicombe* for Western Trunk Line Committee; *W. A. Colston*, *J. F. Wright*, and *B. D. Bristol* as committee for southern classification carriers; *H. A. Taylor*, *O. E. Butterfield*, *F. A. Farnham*, *A. P. Burgwin*, and *Henry Wolf Bickel* for Official Classification Committee and Uniform Bill of Lading Committee; *H. A. Scandrett*, *Charles Donnelly*, *Fred H. Wood*, *H. M. Garwood*, *T. J. Norton*, *C. S. Jefferson*, *W. T. Hughes*, and *R. B. Scott* for Western Classification Committee; *R. Walton Moore*, *Blewett Lee*, *W. A. Colston*, *C. B. Northrop*, *James F. Wright*, *John K. Graves*, *A. R. Lawton, jr.*, and *Daniel H. Hayne* for Southern Classification Committee.

*H. G. Wilson* for Commercial Club of Kansas City, Board of Trade of Kansas City, National Industrial Traffic League, *F. H. Price & Company*, and others; *Herbert Sheridan* for Baltimore Chamber of Commerce; *J. H. Henderson* and *Dwight N. Lewis*, commerce counsel of Iowa, for Iowa Board of Railroad Commissioners, Farmers' Grain Dealers Association of Iowa, and others; *W. H. Chandler* for Boston Chamber of Commerce; *Alton G. Briggs* for Boston Fruit & Produce Exchange; *D. F. Hurd* for Cleveland Chamber of Commerce and National Industrial Traffic League; *A. P. Husband* for Millers' National Federation; *F. H. Price* for *F. H. Price & Company*, Millers' National Federation, and National Industrial Traffic League; *Jas. C. Lincoln* for Merchants' Association of New York and National Industrial Traffic League; *Thos. S. Paton* for American Bankers' Association; *Robert F. Donahue* for New York Public Service Commission, First District; *Bernard J. Rothwell* for Bay State Milling Company and Lawrenceburg Roller Mills Company; *Mark Mennel* for Harter Milling Company, Millers' National Federation, and others; *Francis B. James* and *James L. King* for Commercial Exchange of Philadelphia; *J. M. Belleville* for National Industrial Traffic League and Pittsburg Plate Glass Company; *Herbert F. Eggert* for Average Adjusters Association of the United States and Mather &

Company; *G. M. Freer* for Cincinnati Chamber of Commerce; *R. S. French*, *George W. Bond*, and *John C. Scales* for National League of Commission Merchants of the United States; *W. M. Hopkins* for National Industrial Traffic League, Bill of Lading Committee, Chicago Board of Trade, Peoria Board of Trade, and others; *N. B. Kelly* for Eastern Commercial Traffic Committee and Philadelphia Chamber of Commerce; *Russel H. Loines* for Johnson & Higgins and other marine average adjusters; *George F. Mead* for National League of Commission Merchants of the United States, Boston Fruit & Produce Exchange, and Boston Chamber of Commerce; *Edward P. Smith* for Council of Grain Exchanges and for Omaha Grain Exchange; *Arthur T. Waterfall* for Detroit Board of Commerce; *Charles J. Austin* for traffic department of the New York Produce Exchange; *Louis Brandeis* for Louisville Board of Trade; *W. T. Cornelison* for Peoria Board of Trade; *H. W. Danforth* for National Council of Farmers' Cooperative Association; *H. B. Dorsey* for Texas Grain Dealers Association and Fort Worth Grain & Cotton Exchange; *Henry T. Goemann* for Goemann Grain Exchange and Toledo Produce Exchange; *Chas. D. Jones* for Nashville Grain Exchange; *E. W. McKay* for National Lumber Manufacturers' Association; *J. C. F. Merrill*, *C. B. Pierce*, and *W. M. Hopkins* for Chicago Board of Trade; *J. L. Messmore* for St. Louis Merchants Exchange; *A. E. Reynolds* for Crablee, Reynolds & Taylor and for legislative committee Grain Dealers National Association; *Charles B. Riley* for Indiana Grain Dealers Association and Indiana Millers Association; *Frank E. Williamson* for Buffalo Chamber of Commerce; *Cassoday, Butler, Lamb & Foster* for bill of lading committee of National Industrial Traffic League, National Society of Records Association, California Fruit Growers Exchange, and others; *J. W. Craig* for Virginia Millers Association; *W. J. Evans* for National Implement & Vehicle Association of the United States; *Ernest L. Ewing* for Furniture Manufacturers' Association of Grand Rapids and Chicago Furniture Manufacturers Association; *Charles Rippin* for Merchants Exchange of St. Louis; *W. J. Ray* for National Council of Farmers' Cooperative Association and Farmers' Grain Dealers' Association of Iowa; *Geo. A. Wells* for Grain Dealers National Association; *D. G. Loomis* for New York Shippers Protective Association; *D. P. Chindbloom* for Rochester Chamber of Commerce; *C. S. Belsterling* for Carnegie Steel Company, and others; *George F. Kaufman* for Richard T. Spellman and other cattle shippers; *C. H. Cochran* and *C. L. Roos* for Millers' National Federation and Washburn-Crosby Company; *F. B. Montgomery* for International Harvester Companies; *Luther M. Walter* and *John S. Burchmore* for National Industrial Traffic League and Morris & Company; *M. F. Gallagher* and *E. B. Wilkinson* for Illinois & Wis-

consin Retail Coal Dealers Association, Chicago Coal Merchants Association, National Coal Association, and others; *Lee G. Metcalf* for Grain Dealers National Association; *H. C. Barlow* for Chicago Association of Commerce; *J. S. Brown* for board of trade and city of Chicago.

*Oscar F. Bell* for Crane Company and National Industrial Traffic League; *E. T. Rath* for Associated Industries Central Manufacturing District; *James H. Sherman* for Wichita Board of Trade; *Ira B. Mills* and *A. L. Flinn* for Railroad and Warehouse Commission of Minnesota and St. Paul Association of Commerce; *Dwight N. Lewis* for Corn Belt Meat Producers Association and Iowa shippers of perishable products; *J. A. Ballard* for St. Louis Merchants Exchange; *W. F. Bennett* for National Poultry, Butter and Egg Industries Association; *R. D. Sangster* for Commercial Club of Kansas City, Board of Trade, Kansas City, and Kansas City Live Stock Exchange; *L. R. Martin* for Oliver Chilled Plow Works and South Bend Chamber of Commerce; *Colin C. H. Fyffe* and *Paul N. Dale* for Illinois Manufacturers' Association; *John C. Scales* for refrigerator car line committee of the National League of Commission Merchants of the United States; *C. S. Bather* for Rockford Manufacturers & Shippers Association and Federation of Furniture Manufacturers; *Martin Van Peryn* for Wholesale Grocers Exchange of Chicago and Sprague, Warner & Company; *W. S. Miles* for Peoria Board of Trade; *Charles F. Macdonald* for Duluth Commercial Club; *F. O. Paddock* for Toledo Produce Exchange; *W. P. Trickett* for Minneapolis Traffic Association; *C. A. Magnuson* for Minneapolis Chamber of Commerce and bill of lading committee of Council of Grain Exchanges; *Geo. A. Schroeder* for Chamber of Commerce of Milwaukee; *A. E. Helm* for Public Utilities Commission for the State of Kansas; *John S. Willis* for San Francisco Chamber of Commerce and Pacific Coast Traffic League; *F. A. Jones* for Arizona State Corporation Commission; *W. L. Barnum* for Arizona Cattle Growers' and Arizona Sheep Growers' associations; *Alfred A. Cohen* for San Francisco Wholesale Potato Dealers Association; *G. J. Bradley* for Merchants & Manufacturers Traffic Association of Sacramento; *H. W. Adams* for California Fruit Distributors; *W. J. Smith* and *James A. Keller* for Pacific Coast Hardware Jobbers, Pacific Hardware & Steel Company, and Baker & Hamilton; *H. F. Ardery* for California Vegetable Union; *J. A. Steward* for Mutual Orange Distributors; *A. N. Mortensen* for California Fruit Growers Exchange; *Theodore Brent* and *John A. Smith* for New Orleans Joint Traffic Bureau; *W. M. Barrow* for Railroad Commission of Louisiana; *Raymond B. Scudder* for Louisiana Sugar and Rice Exchange; *A. G. T. Moore* for Southern Pine Association; *A. J. Hunt* for Millers' National Federation, Kansas City Millers' Club, and Southwest

Millers League; *W. A. Wimbish* for Atlanta Freight Bureau; *O. L. Bunn* for Chattanooga Manufacturers Association; *J. Prince Webster* for Railroad Commission of Georgia; *A. E. Beck* for Merchants and Manufacturers Association of Baltimore; *J. Keavy* for Indianapolis Chamber of Commerce; *A. W. McLavens* for National Industrial Traffic League packing house interests; *J. S. Marvin* for National Automobile Chamber of Commerce, Incorporated; *L. Weiler* for American Railway Perishable Freight Association; *O. W. Tong* for Northern Potato Traffic Association; *Geo. S. Milnor* for Sparks Milling Company; *J. William Craig* for Shane Bros. & Wilson Company; *E. H. Ferguson* for himself and others; *Richard F. Bausman* for Washburn-Crosby Company; *Grady Cary* for Henry Knight & Son; *R. W. Lightburne* for Price-Lightburne; *R. D. Rynder* for Swift & Company; *Geo. H. Tower* for Standard Oil Company of New Jersey; *P. W. Marshall* and *Charles Brown* for A. Larsson; *W. V. Masson* for Autographic Register Company; *Frank Lyon* for Louisiana State Rice Milling Company; *James W. Sale* for Studebaker Grain & Seed Company; *T. T. Horkrader* for the American Tobacco Company; *Theo. F. Ismert* for Ismert-Hincke Milling Company; *L. L. Seamen* for Hecker-Jones-Jewell Milling Company and Duluth-Superior Milling Company; *Jos. E. Young* for Millbourne Mills, Gardner Mills, and Central Dakota Mills; *E. H. Ferguson* for certain shippers; *C. B. Heinemann* for Morris & Company; *H. K. Crafts* for Armour & Company; *E. J. Perkins* for Stewart-Warner Speedometer Corporation; *Frank G. Harsh* for Earl Brothers and others; *L. D. Rosenheimer* for Booth Fisheries Company; *M. C. Penticoff* for Montgomery-Ward & Company; *G. H. Anderson* for Manhattan Electrical Supply Company; *Perry Small* for Sparr Fruit Company and Arakelein Brothers Company; *Field Sherman* for Randolph Fruit Company; *Frank C. Epperson* for Stewart Fruit Company; *Joseph F. Zahringer* for S. Segari & Company; *M. M. Emmert* for Coca Cola Company; *George B. Elton* for the Southern Cotton Oil Company; *Frank L. Martin* for E. Nichols; *W. J. Tomkins* for Ohio Match Company; *L. W. Christensen* for Denny & Company; *E. P. Mooreherd* for Mooreherd Inspection Bureau; and *F. J. Coulter* for Western Meat Company.

#### REPORT OF THE COMMISSION.

WOOLLEY, *Commissioner*:

#### STATEMENT OF THE CASE.

This proceeding of investigation into the practices of carriers with respect to the form and substance, and the issuance, transfer, and surrender of bills of lading was instituted by the Commission upon its own motion and is, in effect, a resumption or continuation of the former proceeding in which the Commission made and published a

report, *In the Matter of Bills of Lading*, 14 I. C. C., 346. The general subject of bills of lading and of the desirability of uniform bills has been before the Commission in one form or another several times within the last few years, but notwithstanding authoritative approval by this Commission and general approval by shipping interests of the idea of a uniform bill of lading for use on lines of all carriers subject to the act to regulate commerce, efforts to secure the universal adoption and use of such an instrument have failed, so far, of the fullest measure of success, principally because the interests of some carriers, or shippers, or both, or circumstances and conditions peculiar to particular kinds of traffic, or localities, or sections of the country, have appeared to those respective interests to require special consideration in, or forms of, bills.

During the period following the enactment of the so-called Carmack amendment to the act to regulate commerce in 1906 down to the enactment of the first Cummins amendment in 1915, several cases came before the Supreme Court of the United States involving questions of interpretation and validity of conditions and provisions in bills of lading, in which the court sustained the contractual limitations of the carrier's liability. One of these was the leading case of *Adams Express Co. v. Croninger*, 226 U. S., 491. Following the decision in that case there was a distinct change of policy on the part of carriers, generally, in the adjustment of claims made upon them for loss, damage, or injury to property. From a former policy of compromise, of making the best terms possible with the claimant, which was not wholly disadvantageous to the claimant in many instances, and which, of course, was often discriminatory in its operation, a disposition was developed upon the part of many carriers to stand uncompromisingly upon their rights as defined in the bill of lading.

Other important decisions of the Supreme Court during this period are *Kansas Southern Ry. v. Carl*, 227 U. S., 639; *Mo., Kans. & Tex. Ry. v. Harriman*, 227 U. S., 657, and *Boston & Maine Rd. v. Hooker*, 233 U. S., 97, in which latter case it was held that regulations of tariffs filed with the Commission containing provisions respecting limitations of the carrier's liability were presumed to be a part of the transportation contract, and, as such, binding upon both carrier and shipper. Perhaps the most extreme application of the doctrine was in the case of *Pierce Co. v. Wells, Fargo & Co.*, 236 U. S., 278, in which the court held that under the law (the interpretation of the Carmack amendment being involved) a shipper of a carload of automobiles in interstate commerce who had deliberately and purposely, and with full knowledge of the limitation, and for the purpose of securing a lower rate, accepted an express



receipt limiting recovery to \$50, unless a greater value was declared, could not recover more than the value stated. The effect of this decision was to hold that a limitation of liability in the bill of lading was valid even though the amount stated was purely arbitrary, the court saying, "The legality of the contract does not depend upon a valuation which shall have a relation to the actual worth of the property."

A few days subsequent to the decision in the latter case Congress adopted the so-called first Cummins amendment to the act, which changed the Carmack amendment and imposed liability upon the carrier for "the full actual loss, damage, or injury to such property caused by it \* \* \* notwithstanding any limitation of liability or limitation of the amount of recovery," whatsoever, whether expressed in the bill of lading or otherwise. These amendments had the further effect of withdrawing from the states all regulatory authority and jurisdiction over questions of loss, damage, or injury to property shipped in interstate commerce and of bringing such matters under the uniform operation and regulation of federal law.

During this period numerous complaints alleging varying and unfair practices of carriers in the interpretation and application of the rules and regulations of their bills of lading continued to be received by the Commission. The great importance of the bill of lading, not only in transportation usage but as an assignable and negotiable instrument in everyday commercial affairs and transactions, constantly became more evident, tending to accentuate the long recognized necessity for a uniform bill of lading and conformity on the part of carriers to common practices thereunder. The situation described, and the uncertainty in which shippers, carriers, and other interests frequently found themselves involved, made it imperative for the Commission to take action for the purpose of formulating and prescribing uniform bills of lading, if it should prove practicable to do so. Such action was taken through the medium of this proceeding.

The principal questions presented here, as well as in the cases coming before the courts, revolve around the efforts of the carrier in case of loss, damage, or injury to the goods transported by contract to limit its liability in accordance with the terms and conditions stated in its bills of lading.

These facts justify some general observations, elementary, even, in their character, upon the nature of the carrier's liability, and the purpose and function of bills of lading; the application of the federal statutory and the common law to them, and a brief review of this and former proceedings before the Commission touching the subject in general or in particular.

LIABILITY OF COMMON CARRIERS UNDER THE COMMON LAW.

In the celebrated case of *Coggs v. Bernard*, 2 Lord Raymond, 909; 1 Smith's Leading Cases, 369, Lord Holt, in quaint language, states the common-law liability of carriers as of that time to be that if "a delivery to carry or otherwise manage, \* \* \* " is made "to one that exercises a public employment, \* \* \* and he is to have a reward, he is bound to answer for the goods at all events. \* \* \* The law charges this person thus intrusted to carry goods, against all events, but acts of God, and of the enemies of the King. For though the force be never so great, as if an irresistible multitude of people should rob him, nevertheless he is chargeable. And this is a politic establishment, contrived by the policy of the law, for the safety of all persons, the necessity of whose affairs oblige them to trust these sorts of persons, that they may be safe in their ways of dealing; for else these carriers might have an opportunity of ondoing all persons that had any dealings with them, by combining with thieves, &c., and yet doing it in such a clandestine manner as would not be possible to be discovered. And this is the reason the law is founded upon in that point."

Under the common law as it has been developed to the present day in its application to modern transportation conditions and practices, there has been little or no relaxation of the rigor of the rule of the common carrier's liability, but the exceptions have been extended to include loss, damage, and injury due to other causes, and a common carrier is now regarded as an insurer of the goods intrusted to its care and custody for transportation and as liable for all loss, damage, or injury occurring to the goods while they are held by it in its capacity of a common carrier, except when such loss, damage, or injury is caused by: (a) the act of God; (b) the public enemy; (c) the act of the shipper himself; (d) public authority; (e) or the inherent vice or nature of the goods. Generally a common carrier can not, under the common law, exempt itself from the consequences of its own negligence or willful act at any time or under any circumstances in the handling of goods and, therefore, even when loss is occasioned by or results from one of the excepted perils against which it is not otherwise held as an insurer, it will nevertheless be liable for any failure to use the degree of care that would have prevented or minimized losses resulting from the excepted causes. This liability of common carriers as insurers of the goods they transport is thus shown to inhere in the peculiar relationship existing between the carrier and the shipper.

The increase in the amount of business done by carriers, the extension of their operations, and the increase in the value of personal

property carried from place to place within the United Kingdom, made the degree of the carrier's liability a matter of much concern to carriers in England and they began to contrive ways of diminishing it. In the effort to achieve this end it became the custom of carriers to post notices in public places to the effect that they would not assume liability in excess of specified values for goods unless the owner should pay a higher rate in consideration thereof. It was the theory that if such a notice were brought home to the shipper in such manner that he had knowledge of it, it thereby became a part of the contract of shipment and binding upon him.

The English courts of law very early began to give official recognition to the rights claimed by common carriers to thus restrict their common-law liability and it was first held that even so lax a method as the publishing and posting in public places of notices to that intent and purpose would be sufficient to effect the limitation of the carrier's liability when such notices were brought home to the shipper.

The custom, sanctioned by law, which thus grew up in England, was productive of so many evils that in 1854 the Parliament intervened and enacted the railway and canal traffic act. After the enactment of that statute common carriers in England could limit their common-law liability only by a contract with the shipper. In this country, however, the rule was early established that a limitation of the carrier's liability could be effected only by the establishment of a contractual relationship between the carrier and shipper and that a notice of limitation of liability such as was at one time recognized by the English courts was ineffectual and could not be relied upon as a defense in an action for recovery on account of loss or damage to the goods unless the shipper first had notice of the terms and assented to them. Once assented to by the shipper a contract was assumed to be created that would be binding upon him. The form of such an assent is now commonly secured by the giving and accepting of a written bill of lading, assent on the part of the shipper being presumed even though, as is unquestionably the fact, he seldom reads and is, perhaps, actually ignorant of the conditions.

So, the law is now well settled, both in this country and in England, that a carrier may, unless forbidden by statute, limit or restrict, or even extend and enlarge, its common-law liability. Such contracts must, however, be invested with all the requirements of validity attaching to other forms of contract. Mutual assent and a valuable consideration must exist to support the assumption by the carrier of more than its common-law risks or, on the other hand, to support a restriction or limitation of those risks. A consideration for the

52 L. Q. Q.

latter is usually found in the agreement by the carrier to apply a lower or, as it is expressed in the governing freight classifications in effect in this country, "reduced" rate; and this is a sufficient consideration.

#### NATURE AND FUNCTIONS OF THE BILL OF LADING.

An important function of the bill of lading is to give formal expression to the stipulations and conditions under which the carrier seeks to obtain a modification or limitation of the liability that otherwise would be imposed upon it under the common law. While the limitations of the carrier's liability must be agreed to by the shipper and the agreement be invested with the sanctity of a valid contract, neither by common law nor by federal statute in this country is any particular form of contract or solemnity of execution required. Contracts between shipper and carrier, however, are almost invariably evidenced by the more or less formal bill of lading, written or printed, which serves three distinct functions: First, a receipt for the goods; second, a contract for their carriage; and, third, documentary evidence of title to the goods. As a receipt for the goods, it recites the place and date of shipment; describes the goods, their quantity, weight, dimensions, identification marks, condition, etc., and sometimes their quality and value. As a contract, the bill names the contracting parties, specifies the rate or charge for transportation, and sets forth the agreement and stipulations with respect to the limitations of the carrier's common-law liability in the case of loss or injury to the goods and other obligations assumed by the parties or to matters agreed upon between them. That part of the bill which constitutes a receipt may be treated as distinct from the part incorporating the contractual terms. Porter, *Law of Bills of Lading*, §14, citing *Myer v. Peck*, 1 Tiffany (28 N. Y.), 590, *Higgins v. U. S. M. S. S. Co.*, 3 Blatchf. (U. S. C. C.), 282. Ordinarily parol evidence will not be admitted to vary the terms or legal effect of a bill of lading, considered as a contract between the parties to it, although, it seems, that as a receipt for the goods it may be contradicted by oral testimony. *The Delaware*, 14 Wall., 579. It is sufficient if the shipper accepts the carrier's bill of lading without himself signing it. It becomes binding upon him by his acceptance, he being presumed to know and accept the conditions of the written bill of lading. The bill of lading is regarded as representative of the goods while they are in the carrier's possession. It is not a negotiable instrument in the common acceptance of the term, but it may be, and frequently is, made negotiable in form and thus becomes invested with peculiar attributes of great practical importance commercially.

## LIABILITY OF COMMON CARRIERS UNDER THE FEDERAL STATUTES.

Congress has enacted several statutes in recent years which affect bills of lading in various respects. Except the Harter act, approved July 1, 1893, which applied only to carriers by water, and to which reference will be made later, the first of these was the Carmack amendment to section 20 of the act to regulate commerce, approved June 29, 1906, 34 Stat. L., 595, the material provisions of which read as follows:

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

Prior to the adoption of this amendment the liability of common carriers was determined by the common law or the statutes of the different states. A usual provision incorporated in bills of lading then in use was one which provided that no carrier should be liable for any loss or damage not occurring on its own line. Under this limitation an initial carrier was not liable at common law for loss or damage through the fault of the connecting carrier to whom it had, in due course, safely delivered the goods for further transportation. Each succeeding carrier was the agent of the shipper for the continuance of the transportation. The shipper, or claimant, in an action for recovery on account of loss or damage, was therefore subjected to the inconvenience of ascertaining upon which one of several lines in the through route the loss or damage occurred. This was often impossible of definite ascertainment, and, therefore, a serious handicap to the shipper in the prosecution of his suit.

The effect of the Carmack amendment was to hold the initial carrier "receiving property for transportation from a point in one state to a point in another state" as having contracted for through carriage to the point of destination, using the lines of its connecting carriers as its agents. The amendment took away from such initial carrier its former right to make a contract limiting its liability to loss or damage occurring on its own line, and thus relieved the shipping public of the burden theretofore imposed upon it of proving the particular carrier upon whose line the loss or damage occurred. *Atlantic Coast Line v. Riverside Mills*, 219 U. S., 186. The carrier was prohibited from mitigating or escaping the duties and liabilities

imposed upon it by the amendment by any contract, receipt, rule, or regulation which it might make, or attempt to make, with the shipper.

Prior to the decision in the *Croninger Case*, *supra*, there had been much conflict in the decisions, both of the federal and state courts, upon the question of validity of conditions in bills of lading which limited or sought to limit the amount of the carrier's liability for loss, damage, and injury to goods transported. The proviso in the amendment had been construed by both federal and state courts to preserve to the shipper the remedies then existing under state laws when the latter were more advantageous to him than the remedy provided by federal law, and so the rules were interpreted differently according to the jurisdiction in which the case arose. The *Croninger Case* held that it was the purpose of Congress to assume jurisdiction in the fixing of the carrier's liability upon interstate shipments, and thereafter such questions were generally construed in the light of the decision in that case, in which it was held that a contract for transportation containing a stipulation of value to which the carrier's liability was sought to be limited was valid and not in violation of the provision of the act.

On March 4, 1915, Congress enacted the first Cummins amendment, so called, which became effective June 2, 1915, 38 Stat. L., 1196. It extended the territorial application of the provisions of the Carmack amendment to the transportation of goods within the territories of the United States, the District of Columbia, or to goods exported to adjacent foreign countries, and also fixed, definitely and rigidly, the liability of the common carrier by a provision making the carrier liable for the full actual loss, damage, or injury caused by it or any of its connections to the goods transported by it, "notwithstanding any limitations of liability or limitation of the amount of recovery or representation or agreement as to the value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void." That amendment provided, however, for a bona fide declaration of value, which was binding upon both parties under the following conditions:

*Provided, however,* That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules: *Provided further,* That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law.

Notwithstanding the evident purpose of that amendment to invalidate all limitations or attempted limitations of liability of carriers for loss, damage, or injury caused by them, there was much diversity of opinion as to its effect upon rates and upon bill of lading provisions which were at the time in force and effect as published in tariffs on file with the Commission. In response to numerous and urgent requests the Commission conducted an inquiry into some phases of the subject and in its report, *The Cummins Amendment*, 33 I. C. C., 682, expressed its views, tentatively, upon some of the matters and things presented. It found that there was necessity for revision of bills of lading, live-stock contracts, and other similar contracts of carriage, as well as of the classifications and rate schedules; that bills of lading and live-stock contracts ought to be at once amended by eliminating obviously unlawful and invalid provisions, and permission was given to make such changes effective upon less than statutory notice. The expression of the Commission's views upon these matters was made with the express reservation that the questions were subject to judicial interpretation and that its views might be somewhat changed in the light of later developments and more complete information.

By the second Cummins amendment, 39 Stat. L., 441, effective August 9, 1916, the proviso of the first amendment relating to goods hidden from view by wrapping, boxing, etc., was eliminated and the following language substituted in place thereof:

That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, \* \* \* to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section ten of this Act to regulate commerce, as amended; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the Commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary live stock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses.

The effect of the latter amendment is to permit limitations of liability, or the amount of recovery, and the establishment and maintenance, under the prescribed conditions, of rates dependent upon

52 I. C. C.

values declared in writing by the shipper, or agreed upon in writing as the released value of the property, in respect of all property except "ordinary live stock," which, as explained in the amendment, is still subject to the rigorous inhibitions against limitations of the carrier's liability contained in the first Cummins amendment. These conditions, as they affect live stock, will be discussed later in a supplemental report dealing with the live-stock contract or bill of lading.

With respect to all property other than ordinary live stock, unless the carrier shall have been or shall be expressly authorized or required by the Commission to establish and maintain rates dependent upon a written declaration or agreement as to value, the provisions of the first Cummins amendment are still applicable. That rates dependent upon value may be permitted and that the parties may be free to make declarations or agreements in respect of the value of goods, it is provided that such declarations or agreements shall have no other effect than to limit liability and recovery to an amount not exceeding the value stated and shall not be deemed to be in violation of section 10 of the act.

#### JURISDICTION OF THE COMMISSION.

The liability of common carriers for the loss of, or damage to, shipments rests upon definite legal principles, and the enforcement of such liability is not within the jurisdiction of the Interstate Commerce Commission. *Lost or Damaged Freight Replacement*, 43 I. C. C., 257. It can not direct the payment of a loss-and-damage claim, since the failure to pay would not be a violation of the act to regulate commerce. *Larkin Co. v. Erie & Western Transportation Co.*, 24 I. C. C., 645. The Commission is merely the instrument of the law. Its functions are administrative and quasi-judicial. Its authority to prescribe and impose upon carriers the terms and conditions which they shall write into their bills of lading is limited (1) by the common law; that is, the Commission in no event could impose upon the carriers the assumption of any greater liability than the common law imposes upon them; and, (2) by the statutory law, since the Commission's power and authority springs from and is limited by the organic act.

Section 12 of the act to regulate commerce as originally enacted, which defines the powers and authority of the Commission in broad terms provided:

That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.

52 I. C. C.



By the amendment of March 2, 1889, to this section it was provided:

And the Commission is hereby authorized and required to execute and enforce the provisions of this Act.

By amendment to section 1 of the act, effective June 18, 1910, it was made the duty of all common carriers subject to the provisions of the act "to establish, observe, and enforce just and reasonable \* \* \* regulations and practices affecting \* \* \* the issuance, form, and substance of \* \* \* bills of lading."

Under the provisions of section 15 of the act, as amended June 29, 1906, and June 18, 1910, the Commission is empowered, after full hearing upon a complaint made as provided in section 13 of the act, or under an order for investigation made upon its own initiative, to determine whether any regulation or practice is unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of the act and "to determine and prescribe what \* \* \* regulation or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violations to the extent to which the Commission finds the same to exist."

Thus the Commission has power and authority under the act to determine the reasonableness of rules, regulations, and practices of the carriers, and to require them to cease and desist from the enforcement of rules and regulations, and the continuance of practices found to be unreasonable or unjustly discriminatory, or unduly prejudicial. And herein lies the Commission's power to lay hands upon the "issuance, form, and substance" of bills of lading. The act specifically requires carriers subject thereto to issue bills of lading. The Commission has undoubted authority to enforce this requirement in a proper proceeding. It can require carriers to file with it the rules and regulations which they write into their bills of lading. It can, by due process, require that uniform rules and regulations be adopted by carriers subject to its jurisdiction. It can determine whether such are, in and of themselves, or as interpreted in the practices of the carriers, reasonable and nondiscriminatory, and, if otherwise, condemn them and prescribe reasonable rules and regulations, in which event the carriers must obey.

#### FORMER PROCEEDINGS TO SECURE UNIFORMITY OF BILLS OF LADING.

Efforts to bring into use a uniform bill of lading were first initiated by carriers about 25 years ago, and some measure of success was attained through the adoption by carriers in central freight and trunk line association territories of forms that were substantially uniform. Action by this Commission was first taken in November, 1904, when,

52 I. C. C.

acting upon numerous complaints, it instituted an inquiry into certain proposed changes in the provisions of bills of lading by carriers in official classification territory. After extended hearings the Commission, in June, 1908, issued its report *In the Matter of Bills of Lading, supra*. This report dealt only with the general merchandise bill of lading. Special bills of lading for live stock and other special kinds of property were not considered. It did not undertake even to prescribe a general merchandise form of bill of lading and order its adoption because, in its view, such an order at that time would have exceeded its authority. Moreover, the situation did not seem to demand such a positive direction. It did, however, recommend the adoption by all carriers, as a uniform bill of lading, of the merchandise form proposed by a joint committee of shippers and carriers. The form recommended was generally accepted and used by carriers in official and western classification territories, but it was not adopted to any great extent by the carriers in southern classification territory. The latter group of carriers adopted, for the most part, a modified form of the approved bill which is commonly referred to as the "revised standard bill of lading."

#### THE PRESENT PROCEEDING—SCOPE AND PURPOSES.

Failure of carriers thus to adopt the approved bill for universal use, the apparent necessity for such an instrument, and complaints of shippers, heretofore referred to, that certain of the regulations and practices in connection with this and other forms of bills of lading in use by carriers subject to the act were unjust, unreasonable, unjustly discriminatory, unduly preferential, and otherwise unlawful, caused the Commission, on May 6, 1912, to enter an order upon its own motion, instituting the present inquiry. The order for the investigation expresses the object thus:

For the purpose of determining whether the rules, regulations, and practices in connection with the issuance, transfer, and surrender of bills of lading, the conditions contained therein and other practices connected therewith are unjust, unreasonable, unjustly discriminatory, unduly preferential, or otherwise unlawful, and taking such action in connection with bills of lading as may be authorized by law to prevent further violations of the provisions of the aforementioned statutes, should any violations be disclosed by said investigation.

In its report in *The Cummins Amendment, supra*, promulgated May 7, 1915, the Commission remarked that the general subject of bills of lading was then under investigation in the present proceeding and that matters informally presented in the hearings upon the Cummins amendment might be reserved and formally presented for determination in the present proceeding. Various questions relative to the provisions of domestic forms of bills of lading and also to

the various special forms of bills of lading used in connection with the transportation of particular kinds of traffic having arisen, and likewise many questions having been presented with reference to the Cummins amendment, the Commission, on December 30, 1915, assigned the present case for further hearings at different cities throughout the country with the particular purpose of developing information relative to those questions.

The investigation is therefore extended to include consideration, not only of the rules, regulations, and practices of carriers in connection with the forms of merchandise and special bills of lading now in use, but also to the demand for other special forms of bills of lading which it is contended by interested parties should be put into use.

During the course of these hearings it appeared that the desired end of uniformity in bills of lading might be attained, or at least advanced, through the medium of committees of representatives of carriers and shippers acting in conference among themselves and with each other. Such a plan was adopted and, after weeks of conference among themselves, the committee of counsel for the carriers submitted for consideration at a joint conference of carrier and shipper representatives three proposed uniform bills of lading in lieu of the great number and variety of forms then and now in use. These forms consisted of a so-called straight bill of lading to cover domestic merchandise shipments generally, an export bill, and a live-stock bill, and were submitted as sufficient in their judgment to provide properly for all classes of freight transported. Representatives of certain classes of shippers also submitted proposed uniform bills of lading to cover all shipments in domestic commerce and in export which were generally indorsed by shippers and shippers' organizations throughout the country, with the exception of certain shippers of perishable products and of coal. A form was also submitted on behalf of certain associations representing many of the shippers of live stock.

With the carrier and shipper forms above referred to as a basis for discussion, a joint conference under the auspices of the Commission was held in Washington between representatives of various classes of shippers and the carriers' committee. As a result of this conference many differences of opinion, manifested in the outset, in respect to many of the provisions proposed by the respective parties to be incorporated in the uniform domestic and export bills of lading, were either harmonized or brought to clearly defined issues. The forms showing the provisional conditions agreed upon and those as to which agreement could not be reached have been printed by the Commission (Appendixes A and C), and by common consent have been accepted by all parties as working models for the domestic and export bills that shall finally be recommended (Appendixes B and D)

52 I. C. C.

The phraseology of the conditions as to which agreement could not be reached are printed in underscored italics and the shippers' counter proposals, where any were made, are printed in a parallel column in black-face type on the back of the form. This mechanical arrangement facilitates the reference to the phraseology and language as to which the differences of opinion still exist.

The record in the case, voluminous as it is, contains very little that can be accurately denominated "evidence" in the true acceptation of the term. Most of the testimony of witnesses and statements of the parties consist of recitals showing how existing rules and regulations operate disadvantageously and how those proposed might be expected to operate advantageously to the proponents; of expressions of opinion, and arguments as to the legal aspect of the various matters and subjects discussed. Since the points of difference between the carriers and shippers with respect to the provisions of the general merchandise domestic and export forms have thus been reduced to definite issues, it will be unnecessary to consider specifically all the proposed conditions of these bills.

From a study of the differences now existing between the carriers and shippers which have been brought to issue before us and are exhibited in Appendixes A and C as described, it will be seen that the carriers and shippers are not very far apart in respect to most of the conditions proposed to be incorporated in the domestic and export bills. Less progress was made, however, in the endeavor to reconcile differences with respect to the conditions of the live-stock bill of lading, and upon the question of the necessity, which some shippers urge exists, for the formulation and adoption of the special forms of bills of lading hitherto referred to. The progress made by the parties in their endeavors to agree upon a uniform bill of lading for domestic and export traffic makes it feasible to take up these forms for consideration first and we shall therefore discuss them by section and clause, in order, giving particular consideration to the points of disagreement between the shippers and carriers as noted on the forms exhibited in the appendixes.

#### FORMS OF BILLS OF LADING IN CURRENT USE.

There are many forms of bills of lading now in common use throughout the country but they may, for the purposes of this report, be reduced to three general classes, dependent upon the use of the instrument, viz: (1) The general merchandise or domestic bill of lading under which most of the general merchandise traffic of the country is transported; (2) the export bill of lading under which general merchandise traffic destined to foreign countries is moved; (3) the live-

stock contract or bill of lading. Since the latter must be dealt with in a supplemental report it will suffice for the present to confine our consideration to the two general classes first mentioned.

By the so-called Pomerene bill, or bills of lading act, approved August 29, 1916, and made effective January 1, 1917, relating to bills of lading in interstate and foreign commerce, it is provided that a bill in which it is stated that the goods are consigned to a specified person is a "straight" bill, and one in which it is stated that the goods are consigned or destined to the order of a person is an "order" bill. The primary purpose of this law is to enlarge and enhance the negotiability features of "order" bills of lading and by definitely fixing the law with respect to negotiability, and the imposition of greater responsibility upon carriers, to afford greater protection to those who in the course of commercial transaction handle and deal in such bills. The "order" bill, which is made negotiable by this law, differs from the straight bill in common usage, and from the form which we shall prescribe, only in the fact that by endorsement printed on the face of the bill it is denominated an "order" bill. The conditions printed on the back are identical and it will be unnecessary therefore in discussing the bills hereinafter to distinguish between them.

#### CONDITIONS OF THE PROPOSED BILLS.

The working form of the general merchandise domestic form of bill of lading, or conference form, as it may be appropriately designated because evolved as a result of conferences between the shippers' and carriers' representatives held under the auspices of the Commission, contains, under the head of "Conditions," printed on its back, 10 sections of one or more clauses each. Clauses in 5 of the sections are in controversy. The conditions of the export bill are arranged under three heads: I. Those governing the inland service to the port of export; II. Those relating to the service after arrival at the port of export and until delivery at the foreign port; III. Those relating to the service after delivery at the foreign port and until delivery at the ultimate foreign destination. We are concerned only with those conditions that have to do with the inland service to the port of export. The conditions of this part of the bill contain 11 sections. Clauses in 7 of the sections are in controversy.

In order to facilitate ready reference to the different parts of the domestic and export bills, the clauses in each section of the conference or working forms of bills have been numbered separately. These clause numbers appear in parenthesis in the forms shown in appendixes A and C and we shall hereafter refer to the conditions of the proposed bills by section and clause number.

## PART 1.—THE DOMESTIC BILL OF LADING.

The uniform general merchandise bill of lading jointly proposed by the parties (Appendix A) conforms very closely, in its fundamental features, to the uniform bill of lading recommended by the Commission in its report *In the Matter of Bills of Lading, supra*.

## FACE OF THE BILL.

A few minor changes are suggested, viz: (1) In the space provided on the face of the bill for the name of the consignee and destination is a parenthetical enclosure, viz, (Mail address of consignee—not for purposes of delivery). It has been suggested that the wording should read, "Mail or street address of consignee—for notification purposes only." We approve the suggestion. (2) It is suggested that at the end of the space provided for indicating the "Route" there should be inserted the words, "Delivering Carrier." We see no objection to this and therefore approve it. (3) Near the bottom on the face of the form is the following: "*Note*.—Where the rate is dependent on value, shippers are required to state specifically in writing the value of the property. The actual value of the property is hereby specifically stated by the shipper to be not exceeding \_\_\_\_\_ per \_\_\_\_\_."

As we have seen where the proper steps have not been taken to establish rates dependent upon the value, there is no provision for the effect of a declaration or agreed statement of the value in writing. The provisions against any limitation of the carrier's liability contained in the first Cummins amendment are in full force and effect. It is only where rates are lawfully made dependent upon values and the carrier's liability as to the amount of recovery limited accordingly, that the value is required to be stated. Since the Cummins amendment does not require the shipper to state the "actual" value in the latter instances, and since, with possibly a few exceptions, the value declared or agreed upon for purposes of rating or classifying the shipment would often be something less than the "full actual value" of the shipment—and this is permitted by the amendment—it is possible that the word "actual" if retained in the statement of value would not always truly represent the fact, and might prove misleading or cause misunderstanding. We think it should be stricken out and the words "agreed or declared" substituted therefor.

## PROPOSED CONDITIONS.

*Section 1, clause 2, differences in elevator weights.*—The present uniform and revised standard forms of bills of lading contain a provision that carriers shall not be liable for "differences in the weights of 52 I. C. O.

grain, seed or other commodities caused by natural shrinkage or discrepancies in elevator weights." The carriers desire to retain this provision in the proposed form. The shippers concede that the carrier is not liable for loss caused by natural shrinkage or the inherent nature of the property transported, but they propose the elimination of the words "differences in the weight of grain, seed, or other commodities caused by \* \* \* or discrepancies in elevator weights." That a slight shrinkage in the weight of grain, relatively negligible, usually occurs under ordinary transportation conditions is a fact recognized in the trade, and allowances are made therefor in commercial transactions. No point of real difference is raised with respect to this feature and it need not be further discussed.

The circumstances out of which the controversy relative to this provision grows are best illustrated in the handling of grain shipments. When grain is received by a carrier at a country elevator for transportation to a primary grain market or other destination, or is received by a carrier at a primary market for transportation to some other market or destination, the weight given by the shipper and accepted by the carrier is ordinarily that shown by the elevator out of which the grain is loaded. This weight is inserted in the bill of lading with a condition, invariably, that it is subject to correction. Frequently, upon arrival at destination, the grain is again weighed through another elevator and a difference between the first and second elevator weights appears. Now, in such a case a difference in the weights greater than that which could result from natural shrinkage usually results from one of two causes, viz, loss in transit, or "discrepancies," i. e., variance in the weights of the different elevator scales. "Discrepancy" in the sense here used is understood to mean a difference in weights due either to error in calculating and recording the results of one or both of the weighing operations, or a difference due to mechanical imperfection in one or both of the scales, as a result of which there is failure to record a correct weight.

It is urged by those shippers who oppose the retention of this provision in the proposed bill, that it gives the carriers opportunity to decline a claim upon the ground that the alleged loss is in reality not a loss but a "discrepancy" due to a difference in elevator weights. To illustrate: A shipper loads 60,000 pounds of wheat in a car, according to weights at original point of shipment, but the carrier delivers only 59,000 pounds according to scale weights at destination. The carrier may, and does, excuse itself by quoting this clause in the bill of lading. The practical operation of the clause is to place the hazard of transportation on the shipper, whereas the liability should properly rest with the carrier. It is contended that it is no more difficult for the carrier to determine the correct elevator weights than

it is to determine the correct scale weight of loaded cars; that whether a carrier has permitted grain to be lost or stolen is a question to be determined on the facts of the particular case and that the carrier should pay for such grain as may have been lost or stolen; that the clause is in contravention of the Cummins amendment.

The testimony of shippers' representatives is that the claim departments of many carriers stand upon this provision of the bill of lading and refuse to pay claims for actual loss of grain while the same was in the carriers' possession, and that in such instances the shipper has no recourse but must pocket his loss.

The actual loss of grain in transit might, and doubtless would, be indicated by a difference between origin and destination weights, but the shippers seem to entertain the idea that *every* difference disclosed between origin and destination weights is, *ipso facto*, proof of loss of the commodity in transit. They ignore the other possible explanations of such "discrepancies."

By section 21 of the bills of lading act, reference being had to the subject of shippers' weight, load, and count, when property is loaded by the shipper, it is provided:

Where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the bill of lading the words "shipper's weight," or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

In Illinois the state legislature, pursuant to a mandatory constitutional provision requiring it to pass all necessary laws to give effect to one of the articles of that instrument, enacted a law requiring railroad companies to weigh carefully and correctly grain at the time it was received for shipment, to give a receipt for the true and correct amount, and to weigh out and deliver the full amount of such grain, without deduction for leakage, shrinkage, or other loss. A uniform bill of lading act, held not to be repugnant to or inconsistent with the statute first referred to, provided that a carrier might insert in a bill of lading any terms or conditions, not contrary to law or public policy, which did not impair its obligation to use reasonable care, and that such terms and conditions should be binding upon the consignor receiving such bill and making no objection in writing to such terms and conditions so far as they were not contrary to law or public policy. In an action for the loss of grain in transit brought under this statute the plaintiff recovered a judgment in a circuit court of the state which, on appeal to the supreme court of the state, was reversed because of error not relevant to the question we are here



considering. The bill of lading, however, contained a provision similar to that to which objection is here made, and the court in reference to the same said: "We regard that clause in the conditions which exempts a carrier from liability for difference in the weights of grain, seed, or other commodities caused by discrepancies in elevator weights as contrary to public policy," and further: "We assume that 'discrepancy in elevator weights' means difference between weights at the place of delivery and the place of shipment. While the railroad company is responsible for the delivery of the numbers of pounds of grain received, and its receipt in the bill of lading evidence of the quantity received, the constitutional provision was not intended to make the bill of lading an absolute policy of insurance or extend the responsibility of the carrier beyond its responsibility at common law in other respects." *Shellabarger Elevator Co. v. Illinois Cent. R. Co.*, 278 Ill., 333.

Under section 21 of the bills of lading act above referred to, where a shipper of bulk freight has installed and maintains adequate weighing facilities, the carrier must, upon written request, and after reasonable opportunity so to do, ascertain the kind and quantity of grain. This gives the carrier the opportunity of weighing the grain when it is shipped. The arrangement, however, does not provide a like opportunity at destination where, for instance, grain is delivered into an elevator and weighed by the elevator or consignee.

The carrier is liable, both at common law and under the federal statute, for any actual loss of goods caused by it while in transit. If a difference in weights results from actual loss of the goods so caused by it, the carrier must pay the claim for such loss. Under the law it is the carrier's duty to collect, and the shipper's duty to pay, freight charges based upon correct, not estimated, weights. The claimed loss presents a question of fact. Whether or not a "discrepancy" in elevator weights results from actual loss of the commodity or an error, human or mechanical, in the weighing operations, is a question of fact to be determined from all the evidence. The burden of proof to show what is the correct weight should depend, in a measure at least, upon which of the parties, carrier or shipper, is responsible for the accuracy of the weights.

It would appear, therefore, that the disputed provision relative to "discrepancies in elevator weights" is of no real effect in limiting the liability of the carrier and is mere surplusage. Upon brief, one of the shipper's representatives says that it—

adds nothing to and subtracts nothing from the liability of a common carrier. Its presence, however, in the uniform bill of lading, which is filed with and becomes a part of the rate and tariff authority under section 6 of the act to regulate commerce, is mischievous in actual practice and is used as a pretense by claim agents for turning down

52 I. C. C.

claims. It thus becomes a source of discord between carriers and shippers and tends to create strong prejudices in the minds of shippers against railroads and is a constant source of commercial irritation.

We are of the opinion that the words "differences in the weights of grain, seed, or other commodities caused by \* \* \* or discrepancies in elevator weights" impart an unlawful and unreasonable meaning into bills of lading and should be stricken from the uniform bill.

*Section 1, clause 3, liability of carrier as insurer and warehouseman for loss, damage, or delay caused by fire.*—Three proposals of the carriers which are contained in the proposed bill relate, in whole or in part, to warehousing and storage of goods; that is, to the distinctions in the degree of the carrier's liability and obligation as an insurer of the goods on the one hand, and that of a mere bailee or warehouseman on the other after the goods have arrived at destination and are still in its possession; or while they may be held in transit upon proper request of the shipper or owner. Indeed, it is upon this important question, i. e., the degree or character of the carrier's responsibility, that the greatest conflict of interest between the shipper and carrier occurs. The shippers earnestly oppose the carriers' proposals, which are related in principle and which at the present time constitute, and for some years past have constituted, conditions in the uniform and standard bills of lading. The proposals are found in section 1, clauses 3 and 4, and section 4, clause 1, of the proposed bill, and will be considered in the order in which they appear in the proposed bill.

The first proposal, as expressed in section 1, clause 3, with respect to the carrier or party in possession of the property, is that—

for loss, damage, or delay caused by fire occurring after 48 hours (exclusive of Sundays and legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only.

At the conference between the shippers' and carriers' representatives the shippers objected to this provision and proposed in lieu thereof the following phraseology, to wit, "The liability of the carrier as a common carrier shall terminate at such time as is provided or determined by law."

Reduced to its simplest terms the question at issue here is: At what time in case of loss, damage, or injury caused by fire, shall the carrier's liability as an insurer of the goods transported by it be deemed to have ceased and its liability have been reduced to that of a warehouseman only? The answer involves some preliminary study of the carrier's liability in connection with its duty to transport and deliver. The common-law liability of the carrier attaches at the time of delivery to and acceptance by it of the goods for im-

mediate transportation. 1 *Hutch. Carr.* (3d Ed.), § 112. The duty to make delivery to the consignee of the goods transported is an essential part of the carrier's obligation whether expressed in the contract or not. The question when its liability as a carrier terminates and that of warehouseman begins is an exceptionally important one and presents many delicate phases. A valid delivery involves according to the authorities, four requisites, viz: Delivery, (1) to the right person, (2) at a reasonable time, (3) at the proper place, and (4) in a proper manner. 2 *Hutch. Carr.* (3d Ed.), §§ 662-664.

The bills of lading act contains no provision respecting transition from liability of a common carrier to that of a warehouseman. Questions of this nature arising in connection with interstate shipments moving under bills of lading issued pursuant to the act to regulate commerce are necessarily federal questions and the question as to responsibility under the bill of lading is none the less a federal one because it must be resolved by the application of general principles of the common law. *Southern Ry. v. Prescott*, 240 U. S., 632, citing *Adams Express Co. v. Croninger*, *supra*.

In this country there is no uniformly accepted rule determinative of the question as to when the carrier's extraordinary liability ceases and that of a mere warehouseman is substituted, except in the case of carriers by water. The rule as to the latter is that after arrival of the goods the carrier must give the consignee actual, not constructive, notice of such arrival, and also give him a reasonable time within which to remove the goods. What constitutes a reasonable time for the removal of the goods is a question of fact, to be determined by the particular circumstances of the case. In respect of rail carriers three different rules have been evolved, familiarly known as the Massachusetts, New Hampshire, and New York rules. The latter, which has been adopted and applied in a number of states, is sometimes referred to as the Michigan rule. Under the Massachusetts rule the liability of the carrier as an insurer of the goods ends when the goods have arrived at their destination and, even without notice to the consignee, have been safely deposited upon the platform or in the warehouse of the terminal carrier. 2 *Hutch. Carr.* (3d Ed.), § 701, citing *Norway Plains Co. v. R. R. Co.*, 1 Gray, 263. Under the New Hampshire rule carrier's liability ends when the goods have arrived at destination and a reasonable time during which they might have been removed by the consignee has elapsed. Under neither the Massachusetts nor New Hampshire rule is actual notice required. 2 *Hutch. Carr.* (3d Ed.), § 704, citing *Moses v. The Railroad*, 32 N. H., 523. By the New York rule, if the consignee is present upon the arrival of the goods, he must take them without unreasonable delay; if he is not present, but lives at or in the immediate

vicinity of the place of delivery, the carrier must notify him of the arrival of the goods, and then he must have a reasonable time in which to remove them. If, after a bona fide effort to give notice of the arrival of the goods to the consignee named, such consignee does not appear and remove them within a reasonable time, he can not hold the carrier longer as an insurer. If he is absent, unknown, or can not be found, the carrier may store them. 2 *Hutch. Carr.* (3d Ed.), § 708, citing *Fenner v. Railroad*, 44 N. Y., 505, and other cases.

The New York rule is also the law of England and of Canada. *Mitchell v. The Railway Co.*, 10 L. R. Q. B., 256; *Chapman v. Great Western Ry. Co.*, 5 Q. B. D., 278; *Richardson v. Canadian Pacific R. Co.*, 19 Ont. R., 369. It is, in effect, the same as that applicable to water carriers. Its distinctive feature is the requirement of actual notice to the party entitled thereto of the arrival of the goods, unless, after diligent effort so to do, the carrier, because of the death of the consignee, or of inability to learn his address, is unable to serve him with notice. The New York rule is obviously the more just one, since, under all the varying conditions of rail transportation of to-day, it is as impracticable for the consignee to anticipate the day and hour of arrival of trains, or the probable time of placement of cars, or tender of delivery, as it was for the consignee of goods transported by water to anticipate the time of arrival of the ship bearing his goods.

The carriers contend: (1) That the common-law rule upon the question of the difference in liability with respect to carrier and warehouseman has not been abridged or in any way affected by federal legislation; (2) that the rule proposed does not offend against either public policy or the interstate commerce act; (3) that the length of time given after notice more than meets the common-law rule of reasonableness; (4) that the definite form of the wording meets the requirement that the privilege be clearly specified; (5) that the shippers' proposal puts the question of liability back in the same situation that existed prior to the passage of the Carmack amendment and invokes the same uncertainty and lack of uniformity which the Carmack amendment was especially designed to avoid; and, (6) that the act gives the Commission no power to impose upon carriers a heavier liability than may be found in the statute and under the common law.

The shippers' opposition to the carriers' proposal is predicated upon the following grounds, chiefly: (1) That a rule terminating the carrier's liability after 48 hours after the giving or sending of notice of arrival at destination would inevitably result in many instances of injustice; (2) that the provision would terminate the carrier's

liability as such by the giving of notice even though, in the case of a carload shipment, the car were not placed and might not be placed for delivery within 48 hours after the giving or sending of notice of arrival; and (3) that in case of some commodities the free time under demurrage regulations for the unloading of carload shipments is more than 48 hours and that, therefore, the carrier's liability ought to extend through the time during which it is obligated, under tariff provisions, to hold the car for unloading by the shipper free of demurrage.

Upon broader grounds, more particularly in connection with the proposed provision designated as section 4, clause 1, *infra*, but upon grounds which it will be quite as appropriate to discuss here, the shippers contend against any limitation of the carrier's liability. It is urged upon brief in behalf of one group of shippers that "any service performed by the carrier is 'transportation' and that the liability of the carrier is that of a common carrier throughout the time the property is the subject of transportation as defined in the first section of the act to regulate commerce." \* \* \* "That since storage and delivery are a part of transportation the carrier must be liable throughout the course of the property (transportation?) as a common carrier. The act to regulate commerce deals only with common carriers. The Commission should not permit the carrier to limit its liability to negligence, only, while property is in storage."

In behalf of another group of shippers it is urged (1) that property in possession of the carrier does not receive what can properly be termed a warehouse service; that the carrier can not leave the goods in the car, no matter how long the time, and claim warehouseman liability; that the warehouseman service must be actually given after the reasonable time for removal has expired; that when goods arrive at destination and are held in a vessel, car, depot, or place of delivery they are still receiving transportation service; (2) that such a holding of property is a part of the service that must be rendered in connection with the delivery, and is performed by the carrier as a common-carrier service; (3) that to restrict the carrier's liability to that of a warehouseman, only, when it does not render such a service would deprive the shipper of the benefit of the liability which the character of the service requires and would be a penalty of unnecessary and unreasonable severity for the failure to remove property at the expiration of 48 hours, failure for which the demurrage rules already provide a sufficient penalty; (4) that until the property is received or until such time as it should reasonably be removed, the shipper is entitled to demand that the carrier shall exercise the same diligence and be responsible to the same extent for property in its possession. (5) It is not claimed that the carrier should be held to

the liability of a common carrier for goods in its possession awaiting delivery indefinitely. The shippers express no opinion as to what would be a reasonable time during which the carrier might be required to continue its high degree of liability, but say merely that the law now prescribes that at the lapse of a reasonable time for the removal of the goods the carrier's responsibility as a common carrier ceases and it becomes liable as a warehouseman only; that what constitutes a reasonable time must be determined from all the circumstances and conditions affecting each particular shipment; that it is impossible to fix an arbitrary time to take the place of the reasonable time prescribed by law without resulting in many cases of individual hardship.

These arguments are apparently based upon a construction of the terminology of section 1 of the act to regulate commerce and of two decisions of the Supreme Court of the United States touching the carrier's liability in respect of goods remaining in its custody after arrival.

In *Cleveland & St. Louis Ry. v. Dettlebach*, 239 U. S., 588, the question, as stated by the court, was, "Whether the limitation of liability (under which a shipment of household goods had been received and transported) may be deemed to have spent its force upon the completion of the carrier's service as such, or must be held to control, also, during the ensuing relation of warehouseman." The lower court had held to the contrary, reasoning that the limitation of the amount of the carrier's liability provided for in the bill of lading inured only to the benefit of the carrier as such and that the consideration of a reduced rate which supported the transportation contract could not be carried over so as to operate as a limitation of the amount of the carrier's liability in its capacity of warehouseman, but the Supreme Court ruled that the shipment having been made under an express contract made for the purpose of interstate transportation, such a contract must be determined in the light of the act to regulate commerce.

Discussing the language of section 1 of the act the court held that the term "transportation" included all services of the carrier in connection with the shipment, including storage of goods after arrival at destination. The court said:

From this and other provisions of the Hepburn act it is evident that Congress recognized that the duty of carriers to the public included the performance of a variety of services that, according to the theory of the common law, were separable from the carrier's service as carrier, and, in order to prevent overcharges and discriminations from being made under the pretext of performing such additional services, it enacted that so far as interstate carriers by rail were concerned the entire body of such services should be included together under the term "transportation" and subjected to the provisions of the act respecting reasonable rates and the like.

The court's decision related only to the question indicated, viz, whether the *limitation of the amount* of liability provided for in the bill of lading had "spent its force upon the completion of the carrier's service as such, or must be held to control, also, during the ensuing relation of warehouseman." The decision has no bearing upon the question as to *when*, or under what circumstances, the liability of the carrier, as such, ceases and that of warehouseman begins.

Shortly after this decision was rendered the case of the *Southern Ry. v. Prescott*, *supra*, came before the Supreme Court on error to the supreme court of the state of South Carolina. That case involved the liability of the carrier of an interstate shipment as warehouseman of the goods after their arrival at destination. One of the stipulations of the bill of lading, substantially the same as that which we are here considering, was that "property not removed by the party entitled to receive it within 48 hours (exclusive of legal holidays) after notice of arrival" might be kept in car, depot, or warehouse, "subject to reasonable charge for storage and carrier's liability as warehouseman only." After arrival of the goods the consignee paid the entire freight charges and took away 4 of the 13 packages constituting the shipment. The company's agent consented that 9 packages might remain to meet the consignee's convenience in removal. Before they were called for the carrier's warehouse, with its contents, including the 9 undelivered packages, was destroyed by fire. The Supreme Court held that "transportation" as defined in the act includes the service of the carrier as warehouseman and that the retention of the part of the shipment in question was a terminal service forming part of the transportation service in the sense of, and governed by, the act to regulate commerce and that the carrier was liable for negligence only.

The duties of the carrier and the shipper in respect to the delivery of goods are reciprocal. The circumstances and conditions attending the delivery of freight at terminals in the large cities, and even from the depots of carriers in the smaller communities, are such that it is not only impossible for the shipper to anticipate the arrival of his goods and be there to receive them, but also it would be equally disadvantageous to the carriers, whose facilities for the receiving and handling of freight are so congested and inadequate in many communities that much time and thought on the part of transportation companies, public commissions, and regulatory bodies are being devoted to the solution or amelioration of such conditions.

The common-law rule varies in this country, as we have seen, there being three different applications, each in different jurisdictions. It might be argued, therefore, that any order issued by this Commission would have the effect of changing the rule in one or more of

these jurisdictions and would be beyond the authority of this Commission as being an attempted exercise of legislative functions not specifically delegated to it by Congress. We think no such question of our jurisdiction could be seriously raised upon the ground stated. Though perhaps mixed with the question of the common-law rule, it is primarily an administrative question. What we are really dealing with are certain rules, regulations, and practices of the carriers, viz, those upon which the question of the termination of the carrier's liability as such would cease under the law and its liability as a warehouseman would begin. The primary question is one of fact and as an administrative matter it is both desirable and proper, in order that unnecessary controversy may be avoided, that a reasonable rule should be adopted for the determination of this question. As a practical matter, it is not only essential that the shipper should have notice of the arrival of his goods, but that the carrier should place them in an accessible position to be received by him and removed. Until they are so placed and tendered for delivery it is obviously impossible for the consignee to receive and remove them and the carrier can not reasonably be relieved of its common-law liability until it has so placed or tendered the goods for delivery. If the consignee, or other party upon whom is the duty to receive the goods, does not remove them within a reasonable time thereafter, the carrier's common-law liability should cease and become that of a warehouseman only. The consignee should have a reasonable time within which to remove the goods after notice has been duly received or given that they are *ready for delivery*, and the carrier's notice to the shipper should be one which not only notifies him of the arrival of the goods, but also that they are ready for delivery, or that, in the case of a carload shipment, the car has been placed at a designated place for delivery, or that the carrier awaits orders respecting its placement or delivery. This, in substance, is the common law and the established practice of the carriers even in those jurisdictions where, under the strict application of the Massachusetts and New Hampshire rules, they might not be required to give notice.

It is not the question of notice, as such, in this clause with which we are here concerned, for the carriers' proposal includes the giving of notice. The question is of the propriety and reasonableness of the proposal to reduce the high degree of carrier liability to that of a warehouseman; that is to say, to liability for negligence only, for loss or damage caused by fire after 48 hours (exclusive of Sundays and legal holidays) *after notice has been sent or given*. There can be no reasonable division, as between the carrier and the shipper, of the carrier's liability for the goods while they are in its custody and



until it has fulfilled its duty of delivery or, by reason of the consignee's neglect or failure, has, after reasonable efforts so to do, been unable to make the delivery. It follows therefore that there is a conflict between the provisions of the bill of lading limiting the free time to 48 hours after tender of delivery or notice that the shipment is ready for delivery, if the tariffs applicable give the shipper a longer time within which to remove the goods before demurrage or storage begins. The consignee is within his legal rights if he avails himself of the full time allowed by the tariffs and the carrier can not be presumed to be released from its liability, as such, while the goods are continued in its custody and the shipper, in accordance with privileges specifically accorded under duly published and filed tariffs, incurs no penalties.

We find that the provision in the proposed uniform bill of lading is open to the objection made by some of the shippers, to wit, that it makes the carrier's liability dependent upon the sending or giving of notice of arrival, and not upon a delivery, or tender of delivery. We think this objection should be removed, and that the clause should be amplified and changed to read as follows:

The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of property upon consignee's order, has been made.

*Section 1, clause 4, liability of carrier for property while stopped and held in transit.*—The present uniform bill provides that:

Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or from riots or strikes, or for country damage to cotton.

The standard bill contains a similar provision but without the parenthetical clause relative to the burden of proof.

The carriers desire to retain this provision in the proposed bill, but it is objected to by some of the shippers. The grounds upon which the carriers contend for this provision are: (1) That transit is a privilege carried in many tariff publications and that generally no extra charge is made for such service; (2) that it is granted upon condition that the carrier shall be relieved from liability as an insurer while the property is so held at the request of the owner; (3) that the property during that time is not within the full control of the carrier, but is held at a designated point under instructions from the shipper; (4) that the service is analogous to that of a ware-

houseman and the liability should be that of a warehouseman; (5) that the Commission is not empowered to extend the carriers' liability; (6) that shipments are held in transit frequently for a considerable length of time in cars and warehouses of the carriers; (7) that for so valuable a privilege held out by the bill of lading the carriers would be entitled to additional compensation for the liability assumed; (8) that in the absence of limitation in the contract the carrier's liability is that of a warehouseman only.

The shippers contend against the retention of this provision on the grounds: (1) That the stoppage in transit is a part of the service for which the transportation charge is made, or, as is often the case, for which an additional charge is made, and that if loss or damage occurs while the owner of the property is availing himself of a lawful provision of the tariff and the carrier is actually in possession of the property it can not absolve itself from liability; (2) that the property held in transit is still the subject of transportation and is subject to the same possibilities of loss or damage as though it were in course of actual movement or held in the yards awaiting switching movement.

No substantial evidence was introduced by the parties bearing upon this issue. The carriers argue that when the shipper steps in and exercises dominion over the property while it is in transit he takes it out of the power of the carrier to complete the transportation and, accordingly, that it has been held by the courts that in such case the liability of the carrier is reduced to that of a warehouseman only. *St. L., A. & T. H. R. Co. v. Montgomery*, 39 Ill., 335; *McVeagh v. A., T. & S. F. R. Co.*, 3 N. Mex., 205; *Elliott on Railroads*, §1543; *Michie, Carriers*, §1091.

They contend that stoppage *in transitu* is of value to the shipper, not only in cases of insolvency of the consignee, but very materially so in cases of diversion to meet different and advancing markets, and in a great many other ways; that for these reasons it is very largely taken advantage of by the shipper; that since it is such a service as is asked for by the shipper and granted by the carrier, it follows; first, that it should be specified; second, that it is both proper and right that the carrier should be permitted to specify its liability in connection with such a service.

In behalf of the shippers it is contended in a brief filed by the National Industrial Traffic League that "property held in transit is still the subject of transportation and as such is subject to the Carmack and Cummins amendments."

It is unnecessary for the purposes of this case to inquire into the principles upon which the legal right of stoppage *in transitu* rests. We are more particularly concerned with its development into the various forms of transit services which in the modern development

or extension of transportation services have come to be quite generally accorded to shippers under other circumstances and upon other grounds than those upon which the purely legal right of stoppage *in transitu* rests. Under modern practice the owner of goods may usually direct the carrier to stop his goods in transit; he may then reconsign them to another consignee; take delivery of them at a point intermediate to the original destination; order them diverted to a different destination, or returned to the original point of shipment. Such control over their property during transportation is freely exercised by shippers in this country and, where regularly done in accordance with commercial customs and practices, is customarily provided for by carriers in their tariffs. Sometimes the service is included in the stated rate or charge for transportation, in other instances an additional charge is made.

We have already discussed the question of the termination of the carrier's liability as an insurer of the goods after arrival at destination, and we have seen that such liability does not attach until property has been delivered to it for immediate transportation. When goods are merely delivered to a carrier or deposited in its warehouse and are not to be transported until further orders from the owner, the carrier's liability is that of a warehouseman or bailee only. *Wilson v. International Ry. Co.*, 160 N. Y. S., 367; *Louisville & Nashville R. R. Co. v. The U. S.*, 39 Ct. Cl., 405. The circumstances are somewhat different, however, when goods are held at an intermediate point because of interrupted transportation. As has been said with respect to the liability of the carrier as a warehouseman of goods while they are in transit: The owner loses sight of his goods when he delivers them to the first carrier and has no means of learning their whereabouts until he or the consignee is informed of their arrival at destination. At each successive point of transfer from one carrier to another they are liable to be placed in warehouses, or to be delayed by the accumulation of freight or other causes and exposed to loss by fire or theft. Superadded to these risks are the dangers of loss by collusion, quite as imminent while the goods are thus stored at some point unknown to the owner as while they are in actual transit. As a general rule, the storing of the goods under such circumstances should be held to be a mere incident to the transportation, and they should be under the protection of the rule which makes the carrier liable as an insurer from the time the owner transfers their possession to the first carrier until they are delivered to him at the end of the route. *McDonald v. The Railroad*, 34 N. Y., 497; see also *Lewis v. Chesapeake & O. Ry. Co.*, 47 W. Va., 656; *Southard v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 60 Minn., 382.

It is otherwise, however, when the holding is at the instance of the owner of the goods and in the exercise of a right on his part, for then the carrier is placed in a different position with respect to the goods, and the circumstances of the case may divest the carrier of the high degree of responsibility which rests upon it while the goods are in its possession and in course of transportation. Under these circumstances the carrier, it is true, still has the goods in its custody, but the transportation which has been interrupted and interfered with by the owner can not be continued until further orders have been received from the owner. The carrier's function as a transportation agent is suspended for an indefinite, and often a long, period of time. "Thus where the goods have been delivered to the railroad company for shipment, and they were loaded upon its cars for that purpose and were about to be started, but the company was then requested by the owner to wait until he could see the party to whom he had sold them, which request was complied with; and the next day the goods, while being so detained, caught fire and were damaged, it was held that from the moment the request was made to detain the goods the liability of the company was as a warehouseman only". 1 *Hutch. Carr.* (3d Ed.), § 113; *St. L., A. & T. H. R. R. Co. v. Montgomery, supra.*

The same principle, it would seem, should apply when, upon orders of the owner, property is stopped and held in transit pending further orders from the owner. The holding at the owner's order is not accessory to the transportation. The precise point at which the goods may be stopped and held, that is, whether in terminal yards or warehouses of the carrier, or at an intermediate point on the line of transportation, is immaterial.

From our study of the question we think that even in the absence of express stipulation the carrier's liability, under the circumstances contemplated, would be that of warehouseman, only, while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request.

Although the matter is not brought in issue, we are not satisfied with the carrier's claim of exemption, which is included in this clause, from loss, damage, or delay on account of strikes or riots. We are of the opinion and find that this provision should be amended so as to provide that carriers shall not be liable for "delay caused by riots or strikes," as thus modified we think that the condition proposed by the carriers would be in accord with the law and just and reasonable.

We conclude, therefore, that the stipulation proposed by the carriers is in accord with the law and is just and reasonable. It is therefore approved.

*Section 1, clause 5, transportation in open cars.*—In section 1 of the present uniform and standard forms of bills of lading it is provided that—

When in accordance with general custom on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be upon the carrier or party in possession.

The carriers desire to retain this provision in the proposed uniform bill, but the shippers object and offer the following as a substitute:

Property not customarily transported in open cars, when transported in open cars at the request of the shipper, shall be at the owner's risk as to loss or damage resulting from the use of such open car, provided such loss or damage could not have been prevented by reasonable care by the carrier or party in possession; provided further, however, that in the case of loss thereof or damage thereto by fire, the liability of the carrier or party in possession shall be the same as if the property had been carried in a closed car, and the burden to prove that the carrier exercised reasonable care shall be upon the carrier.

It is the custom to transport in open cars certain low-grade commodities and heavy or bulky articles, such as ore, coal, sand, stone, logs, lumber, machinery, engines, agricultural implements, including separators, traction engines, lumber products, poles, street cars, structural and other classes of steel, etc. Detachable parts are frequently included with machinery, engines, etc. More recently, because of the general shortage of equipment, automobiles have been extensively carried in open cars.

The reasons advanced by the carriers in support of the retention of this provision are; (1) that the use of open cars is largely for the convenience of the shipper or consignee; (2) that they are often used to reduce the cost of handling the freight (the shipper usually loading and the consignee usually unloading carload shipments), as well as for the shipment of articles too large or bulky to be loaded into box cars; (3) that there is an additional hazard, and that the carriers have great difficulty in policing the transportation in open cars of property that offers opportunities for pilferage, or is likely to be damaged by weather, or which is peculiarly susceptible to loss or damage to detachable parts that the shipper could remove and thus protect himself, but which he will not ordinarily remove if the carrier can be held liable for the damage.

It is contended on the part of the carriers that the provision in dispute has been long in effect; that it is not affected by recent legislative enactments and that there has been no evidence offered to show that the rule has worked any embarrassment or injustice, and that there is no reason to believe that in the future, any more than in the past, any shipping interest will suffer by the retention of the open-car provision in the bill of lading.

The shippers object to the language of the provision as it reads at present because they say; (1) that the practical effect is to restrict the carrier's liability for all goods carried in open cars to loss or damage by negligence only; (2) that property that is customarily transported in open cars is of such a nature as to be largely free from loss or damage, but when such loss or damage does occur it would ordinarily not be due to the use of open cars, and that the carrier should be subject to the same liability with respect thereto as it assumes with respect to property transported in closed cars; that to put the risk of loss or damage, not directly attributable to open cars, on the shippers would be to impose an unjust burden; (3) that it is the duty of the carrier to transport property that is not ordinarily transported in open cars and that it should be required to assume the liability; (4) that there is no reason for excusing the carrier from liability for loss or damage to goods transported in open cars when such loss or damage is not caused by the fact that an open car was used; that in any event, if property in open cars is to be shipped under a restricted liability, there should be a direct relation between the use of the open car and the loss or damage from which the carrier is to be exempted.

The shippers are willing to assent to a limitation of the carrier's liability when property not customarily transported in open cars is, at their request, so transported and loss or damage occurs as the direct result of the use of open cars. It is obvious, however, that a limitation so phrased might ultimately become inoperative because goods which are not now customarily transported in open cars might in the course of time, and as the result of changed conditions, come to be customarily so transported.

With respect to the evidential facts and conditions, it is to be observed that certain kinds of goods may, and of necessity must, be transported in open cars. Carriers commonly hold themselves out to transport such goods, and they must therefore receive and transport them when offered for shipment. In the absence of statutory prohibition, it seems, the carrier may stipulate for a limitation of its liability in receipt of goods so transported except, of course, that it can make no stipulation for exemption on account of loss or damage caused by its own negligence, 2 *Hutch. Carr.* (3d Ed.), § 506, and under the law, when a consignor of goods agrees that they may be loaded and transported in open cars, the carrier, in the absence of negligence on its part, is not liable for any damage caused to the goods by their being so loaded and transported. *Western & A. R. Co. v. Exposition Cotton Mills*, 81 Ga., 522. But the carrier must exercise ordinary care and diligence even when the shipper agrees to or requests the transportation in open cars. *C., St. L. & N. O. R. Co. v. Moss*, 60 Miss., 1003; *Michie, Carriers*, § 1020.

We are of opinion that the exemption stipulated for in the present and proposed bill is too broad and too greatly favors the carrier to be entirely just and reasonable. Moreover, we think that it falls within the provisions of the Cummins amendment so far as it seeks to exempt the carrier from the liabilities with which it would be charged under the common law. To that extent it would be invalid and void. To the extent that the carrier would escape liability at common law, stipulation is unnecessary. We shall therefore not approve either the rule proposed by the carriers or the substitute offered by the shippers for inclusion among the conditions.

*Section 2, clause 3, measure of carrier's liability for loss or damage.*—In the uniform bill of lading approved by the Commission in its report *In the Matter of Bills of Lading, supra*, there was contained the following provision, which then constituted paragraph 2 of section 3 of the conditions:

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

One of the questions considered by the Commission in its report in *The Cummins Amendment, supra*, was thus stated:

May the carriers lawfully provide in their tariffs and rate schedules that their liability shall be for the full value of the property at the time and place of shipment?

Upon this question the Commission said:

It is urged that this rule would relieve the question of the amount of liability from uncertainty, would afford a reasonable and uniform method of determining the measure of recovery, save endless litigation with its attendant labor and expense, and avoid unjust discriminations.

The Cummins amendment clearly places upon the carriers liability for the full actual loss, damage, or injury to the property transported which is caused by them, and it makes unlawful any limitation of that liability, or of the amount of recovery thereunder, in any receipt, bill of lading, contract, rule, regulation, or tariff filed with this Commission, without respect to the manner or form in which such limitation is sought to be made. The loss or damage must, apparently, be either as of the time and place of shipment, time and place of loss or damage, or time and place of destination. Where rates are lawfully dependent upon declared values, the property and the rates are classified according to the character of the property, of which the value of the property may constitute an element, and such classification is necessarily as of the time and place of shipment. It is therefore believed that the liability of the carrier may be limited to the full value of the property so classified and established as of the time and place of shipment.

Upon brief in the instant case the carriers say:

The carriers thereupon assumed that they were entitled to provide that liability should be determined with respect to the value of the property at the place and time of shipment, and the uniform bill of lading was amended so as to read:

"The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property at the place and time of shipment under this bill of lading, including the freight charges, if paid."

The carriers now propose, as clause 3 of section 2 of the proposed conditions, the following amended provision:

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the actual value of the property at the place and time of shipment under this bill of lading, including the freight charges, if paid; and where the actual value of the property has not been required to be specifically stated by the shipper in this bill of lading, such actual value shall be arrived at from the bona fide invoice price, if any, to the consignee.

The shippers object to this proposed language and propose the following:

The amount of any loss or damage to property, or loss or damage due to delay in the delivery thereof under this bill of lading for which the carrier is liable by law, shall be the full actual loss, damage, or injury, including freight charges, if paid.

While the rigor of the first Cummins amendment, which the Commission had under consideration in *The Cummins Amendment, supra*, was modified by the second amendment, it is still necessary to note that by the terms of the latter the right of the carrier to restrict its liability for loss, damage, or injury caused by it or its connections to the goods transported was revived, or restored, and made lawful *only* as "to property, except ordinary live stock, received for transportation concerning which the carriers shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property \* \* \*." As to ordinary live stock and all other property not falling within the exceptions stated, it seems clear that the strict prohibitions of the first Cummins amendment still apply, and any such limitation of liability or limitation of the amount of recovery without respect to the manner or form in which it is sought to be made is unlawful and void.

It is true that the Commission in its report *In the Matter of Bills of Lading, supra*, approved a rule similar to the one now in effect, and which the carriers wish to retain. Such a rule was lawful, however, as of the time of that action and down to the time when the first Cummins amendment was enacted. There is no warrant for the broad construction which counsel for respondents in the instant case now seek



to put upon the language of the Commission in its report in *The Cummins Amendment, supra*. When closely read, it will be observed that the Commission did not give an unqualified affirmative answer to the question categorically stated (page 693). What the Commission did say was that "*where rates are lawfully dependent upon declared values*, the property and the rates are classified according to the character of the property, of which the value of the property may constitute an element, and such classification is necessarily as of the time and place of shipment." It is, therefore, believed that the liability of the carrier may be limited to the value of the property *so classified* and established as of the time and place of shipment.

To sum up what has been said upon the subject of the limitation of the carrier's liability for loss, damage, or injury caused by it or its connections, property received for transportation by carriers subject to the act may, for the purpose of testing the application of the first and second Cummins amendments, as we construe them, be divided into three classes: (1) Ordinary live stock, which by specific exclusion from the application of the second Cummins amendment is still subject to the first Cummins amendment prohibiting any limitation whatsoever, of such liability; (2) property, other than ordinary live stock, in respect to which the carriers have not been authorized or directed, in accordance with the provisions of the second Cummins amendment to make rates dependent upon values declared in writing by the shipper or agreed upon in writing as the released value of the property, and which, therefore, remains subject to the provisions of the first Cummins amendment, and (3) property, other than ordinary live stock, as to which the carriers, under the provisions of the second Cummins amendment, have been authorized or directed to make rates dependent upon declared or agreed values, in which event the carrier's liability is automatically limited to values predetermined by the declaration or agreement, and as to which, therefore, no controversy can arise respecting the time and place of ascertaining the amount of the carrier's liability.

The proposed rule stipulating that the measure of the carrier's liability shall be the value as of the time and place of shipment, even if valid, could have application only to property falling within classes 1 or 2 as above defined. The question is, therefore, whether the proposed stipulation as applied to such classes of property would be a limitation of liability or limitation of the amount of recovery and therefore unlawful and void. The shippers contend that it would. In the view that we take of the law, it is unnecessary to review the arguments of the parties at any length. The general rule of the common law is that the measure of damages for which the carrier is liable, in the absence of specific stipulations in relation

thereto, is the market value of the goods at destination, plus interest on such value from the date when, in general course, the goods should have been delivered, less the unpaid transportation charges, if any. *Mobile & Montgomery R. Co. v. Jurey*, 111 U. S., 584; *O'Hanlon v. Ry. Co.*, 6 Best & S., 484; *Rodocanachi v. Milburn*, 18 Q. B. Div., 67. To the same general effect are cases decided by the various state courts. Compensation on this basis will generally make the owner whole in respect of his loss.

The bill of lading provision here considered has come before the state courts for consideration in a number of cases. The decisions are not harmonious. It has been held that the rule is valid and reasonable. *Denver & R. G. R. Co. v. A. Peterson Grocery Co.*, 59 Colo., 125; *Matheson v. Southern Ry. Co.*, 79 S. C., 155; that its effect is not to limit or diminish the carrier's liability, but that it merely establishes a rule for determining the value of the property in case of loss. *Grubb v. Atlantic Coast Line R. Co.*, 101 S. C., 210.

The most recent discussion of the question whether or not the proposed rule operates as a limitation of liability in contravention of the Cummins amendment is contained in *M'Caul-Dinsmore Co. v. Chicago, M. & St. P. Ry. Co.*, 252 Fed., 664, where the district court for Minnesota, citing the provisions of the statute, reasons thus:

Under this language, is the provision or stipulation above referred to in the bill of lading unlawful and void? If it is an agreement as to value, which I think it is not, it is clearly so. The answer to the question must therefore be found in the answer to the further question: Was this a limitation of the liability of the carrier, or a limitation of the amount of recovery? And it seems to me the answer to this question is found in the answer to the further question: What would have been the liability of the carrier, and the consequent amount of recovery, if that provision or stipulation had not been in the bill of lading? In the latter case there can be no question, and it was so admitted on the argument, as it had to be, but that the liability and the consequent amount of the recovery would have been that of the common law, namely, the value of the goods at the point of destination at the time they should have been delivered; and that this is the actual loss to the shipper caused by the failure of the carrier to deliver the goods at that time and place, whether the value is greater or less than at the time and place of shipment, is the foundation of the common-law rule.

From the foregoing simple statement, I do not see how it is possible to escape the conclusion, upon a fair and open-minded consideration of the language of the amendment and the obvious and well-known meaning of its terms, that this provision or stipulation in the bill of lading is a limitation of the liability of the carrier and of the amount of recovery, and is therefore unlawful and void.

The proposed rule, being superfluous so far as concerns the transportation of property shipped under rates dependent upon declared or agreed values, and unlawful and void in respect of all other property, we condemn it and direct its complete elimination from the proposed bill. This will involve a slight modification of the context

immediately following the phraseology eliminated as indicated in the form prescribed by the Commission (Appendix B).

*Section 4, clause 1, general liability of carrier as warehouseman after 48 hours.*—This clause is the third in the trio of provisions in the proposed conditions which seek to limit the carrier's liability to that of warehouseman while the property is still in its possession. (See discussion of section 1, clauses 3 and 4, *ante*.) The provision reads as follows:

Property not removed by the party entitled to receive it within 48 hours (exclusive of Sundays and legal holidays), after notice of its arrival has been duly sent or given, may be kept in vessel, car, depot, or place of delivery of the carrier or warehouse, subject to the tariff charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage. Nothing in this paragraph shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Similar or identical provisions have for several years been incorporated in the uniform and standard forms of bills of lading. The carriers wish to retain it, but the shippers propose that the provision be eliminated without substitution.

Upon analysis, it will be observed that the provision contains three distinct propositions: (1) That, subject to different provisions of local rules or law, the free time for delivery or removal of property shall be limited to 48 hours after *notice of arrival* has been duly sent or given; (2) that after the expiration of that time the property may be kept in vessel, car, depot, or place of delivery of the carrier or warehouse, etc., subject to established charges for storage and liability of the carrier as warehouseman only; or, (3) may, at the option of the carrier, be stored in a public or licensed warehouse at the place of delivery or other available place at the owner's risk and cost, and without liability on the part of the carrier, and subject to a lien for freight and other lawful charges, including storage.

With respect to the first proposition, it is scarcely necessary to do more than direct attention to the nature of the criticism against the somewhat similar provision of section 1, clause 3, considered in a prior part of this report, respecting the carrier's proposal to limit the liability to that of a warehouseman "after 48 hours \* \* \* after notice of the arrival of the property at destination has been duly sent or given." The same considerations which have seemed to us to require a modification of the phraseology of that rule apply here as well, viz, the consignee should have the benefit of the 48 hours free time after *tender* of the property for delivery, or, in the case of a car-

load shipment, after notice that the car has been *actually placed* at the accustomed place of delivery or is *held subject* to the owner's orders for disposition, and subject, moreover, to any provisions of lawfully filed tariffs that may permit a longer time in individual cases, or with respect to particular commodities.

So, in respect to the proposition to reduce the carrier's liability to that of a warehouseman only, after tender, or reasonable effort to effect delivery of the property has been made by the carrier, the fundamental governing principles which have been considered in connection with the provision in section 1, clause 3, discussed, *ante*, control here.

One particular objection to the clause here considered is laid against the phraseology of the provision that in the event of non-delivery after specified time the property may, at the option of the carrier, be stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, "and there held at the owner's risk and," etc. It is urged in behalf of some of the shippers that if the entire paragraph is not eliminated that at least the words "at the owner's risk and" should be eliminated, leaving the wording to read "and there held without liability on the part of the carrier." It is urged that this be done because there is at least a possibility that it might be held, under the terms of the provision, that the public or licensed warehouse in which the goods are stored incurs no liability whatsoever, even as a warehouseman, although its regular storage rates are being paid by the shipper or consignee.

We think this objection is well taken. As stated upon brief by the shippers, "clearly the purpose of the phrase above quoted is only to relieve the carrier from liability where the goods are sent to a public or licensed warehouse, and there is obviously no reason why the carrier should include in its bill of lading a phrase which may be construed as relieving the public or licensed warehouse from any responsibility whatsoever for the safe-keeping of the goods."

The rule can not be approved in the form proposed by the carriers. In lieu thereof, we are of the opinion that a rule phrased as follows would be just and reasonable.

Property not removed by the party entitled to receive it within the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or, at the option of the carrier, may be stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the

carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

*Section 4, clause 9, receipt or delivery of property at private or other sidings, wharves, landings, etc.*—Section 5 of the present uniform bill of lading provides:

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at the risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at the owner's risk until the cars are attached to and after they are detached from trains.

A similar provision at present incorporated in the revised standard form of bill of lading and constituting clause 9 of section 4 of the proposed bill, reads as follows:

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, *and, except in case of carrier's negligence, when received from or delivered on private or other sidings or on such wharves or landings shall be at owner's risk until the cars are attached to and after they are detached from trains or unloaded into and after unloaded from vessels.*

The shippers propose the elimination without substitution of that portion of the clause printed in italics above.

The practical effect of that part of this provision to which objection is made is to relieve the carrier of all liability, except for its own negligence (for which it would be liable in any event), for loss, damage, or injury caused by it or by any connecting carrier, to property received from or delivered on private or other sidings, wharves, or landings, occurring at any time when the property is not in a car actually attached to a train or actually in or on a vessel.

The carriers refer to the fact that a similar provision has long been carried in the uniform bill of lading and ask consideration of the testimony of their traffic and claim officers, "with the hope that it may be found possible to dispose of the matter so as to conserve all interests." Evidently this precatory expression is prompted by the disposition of some of the shippers, evidenced during the course of the hearing, to accept a compromise provision. The carriers do not argue the question upon brief, but content themselves with the observation that some of the shippers seem to admit, by inference, that there are some sidings, other than private sidings, on which full common-carrier liability should not be imposed, and contend that there are almost numberless situations where all that can be required of carriers, with respect to property on sidings other than private sidings, is the exercise of ordinary care.

The shippers contend that this provision is not only unreasonable, but that it is in open violation of the law; that by their attempt thus

52 I. C. C.

to limit their liability to that for negligence only, the carriers openly seek to do that which under the law they may not and can not do. Carload freight, when not received and delivered through the carrier's freight or warehouses or upon its docks, is commonly handled upon public team tracks of the carrier or private sidings of the shipper or consignee. It is urged that if a common carrier could limit its liability as proposed, it would, in effect, be liable as a common carrier only in respect of goods received at or delivered from its freight houses.

The carriers' proposal must be considered in the light of actual conditions and general practices obtaining where property is received and delivered at private or other sidings, and of the reasonableness and lawfulness of the proposed limitation. At almost every point in this country where freight is received and delivered, carriers have so-called public team tracks at which carload freight is handled. They are owned by the carriers and are therefore comprehended within the phraseology, "other sidings," as used in the proposed clause in distinguishing them from private sidings owned or controlled by the shippers. Warehouses, elevators, mills, and other industries of shippers are often located upon side or spur tracks connecting with the carriers' main tracks. These side or spur tracks, generally devoted to the exclusive use of one or a few shippers, may be located upon the carriers' rights of way and owned by them, or they may be privately owned by the shippers. The circumstances and conditions of the use of these private tracks are generally similar to those of public team tracks, except, as stated, the use of the private tracks is generally restricted to one or a few shippers, and is not open to the general public. Public team tracks are indisputably part of the carriers' facilities for the receipt and delivery of freight. They are extensions of its terminal facilities and so, it seems, are private industrial tracks or spurs under certain conditions. *Los Angeles Switching Case*, 234 U. S., 294.

In the absence of statutory prohibition, the carriers might doubtless contract for limitation of their liability as proposed, but the shippers contend that it is unreasonable and unjustly discriminatory. Upon brief they urge:

The shipper whose freight is received or delivered upon a siding pays the same rate as the shipper whose freight is received or delivered through the freight house. For the latter the carrier assumes liability from the time of delivery by the shipper to the carrier until the time of delivery by the carrier to the consignee; for the former the carrier now proposes to limit his liability and give to the shipper whose freight is received or delivered on sidings a lesser service and assume a lesser liability than is given to and assumed for the shipper whose freight is received and delivered through the freight house. But to both the same rate is charged. Such a situation would create an unjust discrimination against the shipper whose freight is either received

or delivered upon a siding. That shipper is entitled to the same degree of liability upon the part of the carrier as other shippers paying the same rate \* \* \*.

The condition proposed by the carriers is also unreasonable. As pointed out above the property in detached cars after delivery by the shipper or before delivery by the carrier is in the full possession of the carrier. The carrier's duty toward the property does not cease with the breaking up of trains and it begins before trains are assembled. During the entire course of transportation, which begins with the delivery of the shipment by the loading of it into the car and ends with the delivery of the property by unloading it from the car, the carrier's liability should continue. The shippers have a right to demand such liability and the carriers have no reasonable ground for restricting it.

The carriers' proposal does not directly involve any of the mixed questions of law and fact as to when property has been delivered to a carrier and its liability as such begins. It is, in effect, a proposal to limit or defer the attachment of that degree of liability until the property, after having been received for transportation, and after having come into the custody and under the absolute dominion of the carrier, shall have come into a certain condition or position incidental to the actual transportation, i. e., until it is loaded into a vessel, or until the car in which it is loaded shall have been attached to a train.

So, in respect of shipments transported by a carrier for delivery to a consignee at destination, the proposal would terminate the carrier's liability, as such, even more abruptly and under even less justifiable circumstances than were discussed in a prior part of this report, in connection with the proposal in clause 3 of section 1, to limit the carrier's liability to that of warehouseman after 48 hours after notice of arrival of the property at destination had been duly sent or given. We say more abruptly because, under the proposal we are here considering, the carrier's liability would apparently be terminated as soon as a shipment had arrived and been set out of the train in the yards at the destination terminal—even before the giving of notice to the consignee.

Then, again, the shipper or consignee would apparently have to assume the risk even though, under the carrier's tariff, it might be entitled to 48 hours or more to remove or unload the property after the receipt of notice of arrival. Indeed, it is not clear how the proposal we are here considering can be reconciled with some of the other proposals of the carriers that we have heretofore considered and discussed, relative to the transition of the carrier's liability from that of an insurer to warehouseman. The liability of a railroad company as a common carrier continues after the arrival of the goods in a freight yard at the city of their destination until they have been placed at the disposal of the consignee, though the bill of lading provides that the carrier shall not be liable after the arrival of the

goods at their destination. *Liverpool & L. & G. Ins. Co. v. M'Neill*, 89 Fed., 131. Notwithstanding such a provision in the bill of lading, public policy has been held to so modify the contract as to give the consignee a reasonable time within which to remove the goods after arrival before the carrier's liability as such ceases. *Tallassee Falls Mfg. Co. v. Western Ry. of Alabama*, 128 Ala., 167.

It seems scarcely necessary to discuss the merits of this proposed limitation further, nor, in the view that we take of the matter, is it necessary to consider whether or not it would be in violation of the Cummins amendment. We think the proposal indefensible. The law affords sufficient protection to the carrier in the almost numberless variety of circumstances in which the application of such a limitation in the bill of lading might be invoked. We therefore find that the proposal expressed in italics is and would be unreasonable and should be omitted.

*Section 4, proposed new provision for notice to consignor and consignee in the case of loss resulting in nondelivery and to the consignor in the case of goods refused or unclaimed at destination.*—The shippers propose the incorporation in section 4 of the bill of lading of a new rule providing for notice to the consignor and consignee in case of loss resulting in nondelivery of the property, and to the consignor when shipments are refused or unclaimed at destination. The proposed clause reads as follows:

Where the said property provided for in this bill of lading is lost or destroyed, resulting in nondelivery of the shipment, the carrier or party in possession shall immediately give notice thereof both to consignor and the consignee. If the property covered by this bill of lading is plainly marked with the name and address of the consignor, or if the carrier's agent at destination has otherwise specific notice thereof in writing, and such property is refused or unclaimed at destination, the carrier or party in possession thereof shall send notice of such refusal or nonclaim to the consignor within such time and by such means as may, in the circumstances, be reasonable.

The shippers advocate the incorporation of such a provision in the proposed bill, because, they say: (1) The observation of such a practice will tend to reduce losses to the shipping public; will obviate the necessity of tracing shipments, and diminish the number of claims; (2) that the proposed provision would be reasonable and requires merely the exercise of due diligence; (3) that it would work no hardship on the carriers, because the consignor could, as a practical matter, be notified only where he had taken the precaution to insure its being done or where the billing plainly indicated the name and address of the consignor; (4) that a similar rule was required to be established by the express companies and is to-day incorporated in the standard express receipt; (5) that a rule providing for notice to the consignor in case of loss or destruction of the property making



delivery impossible would be reasonable, because in such a case knowledge of the fact would be solely in possession of the carrier and prompt notice to the consignor would frequently enable the shipper to minimize his loss and enable him promptly to comply with his contract by replacing the goods; (6) that a rule providing for notice to the consignor in case of goods refused or unclaimed at destination would often prevent the accrual of demurrage and storage charges which might amount to more than any profit that could be expected from the sale of the goods; moreover, the latter may deteriorate or the market price decline; (7) that what all parties should seek to do is to prescribe the best method, both for the carrier and the shipper, that will expedite the transportation of property and limit or lessen the loss to any parties connected with the transaction; (8) that it is now almost a uniform practice for carriers to give notice, substantially as provided for in the clause suggested, and since it is to that extent now regarded by the carriers as good business practice it ought to be made obligatory.

The shippers point out that provisions of the bill of lading already agreed upon provide for notice to the consignor when nonperishable property is refused or unclaimed at destination, but that under this rule the notice to the consignor is one of intention to sell the property for charges after a certain length of time and that it is not given promptly or within reasonable time; that the rules already agreed upon provide that where perishable property is refused at destination, or the consignee fails to receive it promptly, the carrier may, in its discretion, to prevent further deterioration, sell the same to the best advantage at private or public sale, and that if there is sufficient time to send notice of refusal or failure of the consignee to receive the property, such notice will be sent to the consignor in order that he may give disposition orders, if possible, but, the shippers insist, such notice should be sent to the consignor whether or not there is sufficient time to receive a reply giving such orders.

The shippers explain that the provision that notice may be given "within such time and by such means as may, in the circumstances, be reasonable" means that the carrier shall be expected to make use of the telegraph in case of nondelivery of perishable property, which in many cases might make it practicable for the shipper to give, and the carrier to receive, disposition orders. They say, however, that the carrier should, of course, in any event, be permitted to make disposition of perishable property, if necessary, without awaiting disposition orders.

The carriers seem to be disposed to dispute not so much the desirability of the end sought to be attained by the rule as the propriety of giving it, as they say, a "bill of lading status." Their

testimony is to the effect that they are now exerting themselves to give notice to the consignor of property when it is lost or destroyed in a wreck, or when it is refused or unclaimed at destination. They contend, however, that in the case of lost or astray shipments, it would be impracticable to give immediate notice to the consignor, because frequently shipments are mislaid or delayed in transit or go astray and subsequently turn up. Under the operation of Freight Claim Association rules carriers diligently seek to trace lost or astray shipments and to give notice to the shipper or consignee, or both, as speedily as it is practicable to do. They refer, upon brief, to a statement in an opinion of the Supreme Court in *Georgia, Fla. & Ala. Ry. v. Blish*, 241 U. S., 190, as aptly depicting the circumstances under which carriers necessarily operate, viz, that "the transactions of a railroad company are multitudinous and are carried on through numerous employees of various grades. Ordinarily the managing officers, and those responsible for the settlement and contest of claims, would be without actual knowledge of the facts of a particular transaction." The carriers also cite the case of *Kehoe & Co. v. N. C. & St. L. Ry. Co.*, 14 I. C. C., 555, as one in which the Commission, having under consideration a claim by the complainant that the delivering carrier should telegraph the consignor in the event of a shipment refused by consignee, or which could not be delivered because the consignee could not be found, declined to impose upon the carrier the duty of sending a telegraphic notice to the consignor.

The proposed rule, which contemplates imposing upon the carrier two affirmative duties, viz: (1) notice in case of loss or destruction of property, (2) notice in case of refusal or failure of consignee to claim property at destination, has no bearing upon the degree of the carrier's liability, which is, dependent upon the circumstances heretofore discussed, either that of an insurer or warehouseman. There is no suggestion that the incorporation of the proposed rule in the bill of lading, or its omission therefrom, will either limit or enlarge the carrier's liability under the common law or the statute. The duty of railroads in respect to the delivery of property, it may be noted, is different from that of express companies. By custom, usage, and upon grounds of impracticability, the old common-law obligation of carriers to make personal delivery to the consignee is no longer applicable to railroads; it is different, however, with express companies which are, by general custom at least in cities and larger towns, obligated to make personal delivery within defined territorial limits.

At common law "the duty to give notice to the consignor or owner of the goods, in case of their refusal by the consignee, or  
52 I. C. C.

when he is absent or can not be found, can arise only when the carrier is required to make personal delivery or to give notice to the consignor of their arrival. It has no application to railroad companies when they are only required to deposit the goods in their warehouses to await the call of the consignee without notice to him. \* \* \* The failure as warehouseman to give such notice would not be such negligence as to make them liable in that character for any loss which might be thereby occasioned." 2 *Hutch. Carr.* (3d Ed.), § 725, citing *Merchants', etc., Co. v. Hallock*, 64 Ill., 284; *Weed v. Barney*, 45 N. Y., 344. But it is different, it seems, in jurisdictions where the giving of notice of arrival to the consignee is required, for there, according to what appears to be the better authority, the consignor should be notified. Under the Carmack amendment the initial carrier is liable for any loss or damage resulting from the failure of the final carrier to notify the consignee of the arrival of the goods at destination, and for its failure, on the consignee's refusing to accept them, to store the goods for the account of the shipper or to exercise proper care in holding them for him. *American Merchants' Union Exp. Co. v. Wolf*, 79 Ill., 430; *N. C. & St. L. Ry. Co. v. Dreyfuss-Weil Co.*, 150 Ky., 333.

We perceive many difficulties in the practical application of a hard and fast rule of the character proposed by the shippers. Goods frequently go astray for a long time, and afterwards turn up; packages are sometimes marked in such a careless manner as not to be readily identified with the description in the billing. In such cases, it would be practically impossible for the carrier to comply with the strict letter of the proposed rule to give *immediate* notice. The only circumstances in which the carrier could give immediate notice of loss or damage would seem to be, as testified to by carriers' witnesses, in case of wreck, and it is now the practice, at least of many of the carriers, to give such notice. With respect to the second sentence of the proposed rule, others in the bill of lading already agreed upon provide for notice in the manner and under the circumstances therein defined. Moreover, the carriers now have a general custom, as testimony shows, of giving notice to the consignor in the event the property is refused or not claimed at destination. It is a matter of knowledge to the Commission, that under the Freight Claim Association rules and practices, carriers have greatly improved their services in this respect. It is undoubtedly to the mutual interest of the carrier and shipper that such notices should be given, but we have no reason to believe that the carriers fail, in the general conduct of their business, to exercise due diligence and observe good business methods in respect to the giving of such notices. We see

52 I. C. C.

no reason, therefore, for incorporating a rule in the bill of lading of the character proposed and do not approve it.

*Section 7, clause 2, liability for payment of freight charges.*—This clause in the proposed bill reads:

The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carriers shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor shall not be liable for such charges.

The parties are in agreement upon the phraseology of this section, except in respect to one part of it which appears to be regarded as important. The shippers propose that there be inserted in the bill, immediately following the words, "face of this bill of lading," the additional words, "or in a written order of reconsignment." The carriers earnestly object to the shippers' proposal.

A primary right of the carrier in the conduct of its business is that of reasonable compensation for the service rendered by it, and it is entitled to assure itself of such compensation by demanding it in advance. In ordinary commercial practice, however, the carrier waives its right to prepayment of charges and looks to the consignee for the same, its claim being secured by a lien upon the goods. There is a presumption, when goods are transported without exaction of charges in advance, that the consignee is liable for the same as the owner of the goods and that the carrier may look to him for payment. This, however, is a rebuttable presumption. The consignor, being the one with whom the contract of transportation is made, is originally liable for the carrier's charges and unless he is specifically exempted by the provisions of the bill of lading, or unless the goods are received and transported under such circumstances as to clearly indicate an exemption for him, the carrier is entitled to look to the consignor for his charges. In order to secure exemption from liability for the freight charges in case the shipment is delivered to the consignee without the collection of such charges, the consignor is required to append his signature to the following statement in a space on the face of the bill of lading provided for that purpose: "The carrier shall not make delivery of this shipment without payment of freight and other lawful charges."

The shipper's desire that the consignor's stipulation in the bill of lading for exemption from liability for freight charges be carried over to "a written order of reconsignment" is based upon several reasons. It is urged, upon brief, that "it often happens that upon reconsignment the new consignee will be one in whom the consignor does not have the same degree of confidence that he had in the original con-

signee." It is urged, also, that when an order of reconsignment is made, the bill of lading accompanying the shipment must be located and changed and that "when such change is made in the bill of lading it will require little additional effort to make the necessary notation to the effect that delivery shall not be made without requiring the payment of the charges." It is further urged that to omit a provision of this kind from the bill of lading will prevent the shippers enjoying a large measure of the protection carried by section 7 against bills for overcharges or for freight charges not paid by parties who, at the time the freight was received, were amply able to pay the charges thereon.

The carriers object to the insertion of this provision in the bill of lading upon the grounds—

that it is unreasonable to expect the carriers to attach to the very valuable privilege of reconsignment, already sufficiently burdensome to them, an incident which would certainly produce complications and losses. In the first place, the provisions, if amended, could have but a partial and uncertain application to reconsigned shipments, inasmuch as shipments are so frequently reconsigned without a written order by the original consignor. It could not be given a general application without a universal tariff prohibition of reconsignment in any instance whatever, except upon the actual written order of the consignor. In the second place, a carrier, touching the important matter of the payment and collection of freight charges—a matter which relates to the paramount purpose of the act to regulate commerce itself—should be permitted to rely upon the bill of lading issued when the transaction is initiated, and not compelled to observe instructions which would often be hastily and inaccurately transmitted while the shipment is en route. In the third place, it is much easier for a consignor to take the onus at the outset of determining whether he will assume and continue to bear the common-law liability for the payment of the freight charges, or the qualified liability which will accrue under the provision conceded by the carriers, than it is for a carrier to guard against the consequences of having an attempt made to change the liability status while the shipment is being transported.

We do not regard the shippers' proposal favorably. Its effect would be to impose upon the carrier additional risk and responsibility, not in respect of any common-law or statutory duty of *transportation*, but in respect of the security of compensation for its services. The end desired by the shippers has to do with the convenience and security of their oftentimes speculative and impromptu commercial transactions. The business of the carrier is to furnish transportation. Its legal obligations are confined to transportation and the duties incident thereto. It is not obligated to assume risks for the convenience of the consignor which have no direct relationship to its service of transportation.

The Commission is not disposed to approve the laying upon carriers of duties or obligations extraneous to the service of transportation, except and unless to remove unlawful discriminations, and such are not shown to exist here. The suggestion of the shippers is, therefore, disapproved.

*Section 9, clauses 1, 2, 3, 4, 5, and 6, limitations of liability of water carriers.*—Section 9 of the bill as proposed by the carriers, and as revised subsequently to the Washington conferences, reads as follows:

(1) Except in case of diversion from rail to water route, which is provided for in section 2 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with statute or this section, and subject also to the conditions, except in the case of negligence on the part of the carrier or party in possession not provided by statute, that no such carrier or party in possession shall be liable for any loss or damage resulting from fire, or for any loss or damage resulting from the perils of the lakes, seas, or other waters; or from vermin, leakage, chafing, breakage, heat, cold, frost, wet, or change in weather, or by riots, strikes, stoppage of labor or threatened violence, or delay caused by stress of weather, or causes beyond the carrier's control, explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenances, whether existing prior to, at the time of, or after sailing; or unseaworthiness; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. (2) And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall have the liberty to call at any port or ports, to tow and be towed, to transfer, to tranship, to lighter, to load and discharge goods at any time, and assist vessels in distress and to deviate for the purpose of saving life or property; for docking and for repairs. (3) Such water carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry such property upon deck.

(4) If the shipowner shall have complied with the provisions of section 3 of the Harter act, it is hereby agreed that the owners or consignees of the cargo shall contribute with the shipowner in general average, and shall pay any salvage or special charges incurred, even though the necessity for the sacrifice or expenditure was brought about by fault in navigation or management of the ship.

(5) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this bill of lading.

(6) The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors when performed by or on behalf of the rail carrier.

Some of the shippers object to the incorporation in the bill of any conditions stipulating or defining exemptions of water carriers. They propose the elimination of clauses 1 to 5, inclusive, and, further, that clause 6 shall then be changed to read:

The transportation of any property under the terms of this bill and by lighter, water float, or car ferry, in or across rivers, harbors or lakes, shall be deemed to be transportation by rail.

Various other substitute clauses are suggested by other shippers who do not unconditionally oppose the inclusion in the bill of any conditions relative to water carriage. The objections are predicated principally upon the proposition that water carriers are already permitted by specific enactments of Congress to limit their liability

to such a liberal extent that further limitations should not be approved. Moreover, it is contended many of the limitations of their liability which the carriers seek to make through the incorporation in the bill of the clause quoted above would be in violation of the law and therefore null and void, and that the only possible effect to the shipper that could follow from their being printed in the bill would be to mislead the shipper and perhaps discourage or deter him from filing or insisting upon the payment of claims in which he might have a perfectly good cause of action.

Congress has enacted numerous statutes affecting the rights and liabilities of water carriers. The principal acts under which, or in view of which, the proposed conditions are apparently put forth, are the so-called fire act of March 3, 1851, 9 Stat. L., 635; R. S., §§ 4282, 4283, which provides that the owner of a vessel shall not be liable for damage to goods caused by fire on such vessel "unless such fire is caused by the design or neglect of such owner"; and releasing the owners of vessels from all damage in excess of the value of the ship, and the freight then pending, except either by "privity or knowledge" on the part of the owners; and of the principal federal statute restricting the liability of water carriers, known as the Harter act, 27 Stat. L., 445; 2 Supp. R. S., 81.

Conditions similar to those proposed have for some time been carried in the present uniform and revised standard forms of bills of lading. It frequently happens that a shipment moves by rail to a port, or place of transshipment by water, and is routed beyond via the line of a water carrier to final destination. In such cases both the shipper and the consignee may be far distant from the point of such transfer from rail to ship, and in a great majority of such cases it is impracticable to secure a surrender of the railroad bill of lading at the point of transfer or to there make delivery to the consignee. As stated upon brief in behalf of the Pacific Coast Steamship Company—

the result has been that such shipments have been carried by the water carrier subject to the conditions; limitations of liability; provided by the rail carrier's bill of lading—this although the water carrier's rate for the shipment is that provided for a port to port transportation that is subject to the limitations of liability provided by its bills of lading for a strictly port to port transportation. That is, in such case the carrier assumes a greater liability for a shipment that so comes to it, from a rail carrier, than it does if the shipment originate at the point of such transfer.

As the water carriers' port-to-port rates are adjusted upon the basis of the lesser liability provided by its bill of lading, one result is, in effect, that the local shipper is discriminated against.

Section 1 of the act specifies:

That the provisions of this act shall apply \* \* \* to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control,

52 L. G. O.

management, or arrangement for a continuous carriage or shipment), from one state or territory of the United States or the District of Columbia, to any other state or territory of the United States or the District of Columbia, or from one place in a territory to another place in the same territory, or from any place in the United States to an adjacent foreign country, etc.

By section 5 of the act, where the Commission has found that the operation by railroad, or other common carrier subject to the act, of any carrier by water not operating through the Panama Canal, is in the public interest and may be extended or continued beyond July 1, 1914, it is provided that:

In every case of such extension the rates, schedules, and practices of such water carrier shall be filed with the Interstate Commerce Commission and shall be subject to the act to regulate commerce and all amendments thereto in the same manner and to the same extent as is the railroad or other common carrier controlling such water carrier or interested in any manner in its operation.

By section 6 of the act it is further provided that:

When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single state, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the act to regulate commerce, as amended June eighteenth, nineteen hundred and ten: \* \* \* (b) To establish through routes and maximum joint rates between and over such rail and water lines \* \* \*.

These provisions of the act clearly bring water carriers within its operation and control when, and if, they participate in arrangements for continuous shipment and carriage.

The Cummins amendment requires any common carrier, railroad, or transportation company subject to the provisions of the act, receiving property for transportation as defined therein, to issue a receipt or bill of lading therefor, and makes such carrier liable to the lawful holder thereof for the "full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading," etc. Many of the exemptions proposed to be incorporated in this section for the benefit of carriers by water would be in direct violation of the provisions of the Cummins amendment which we construe as applying to such carriers when used in connection with a rail carrier under a common control, management, or arrangement for a continuous carriage or shipment. Carriers by water that are subject to the act, or that are willing to subject themselves to the act, by participating in the transportation of interstate traffic under arrange-



ments with a railroad for through and continuous carriage and shipment of goods, must accept and be bound by the provisions of the act, including the provisions of the Cummins amendment, in respect to liabilities of carriers.

The exemptions from liability which the respondents desire to incorporate into the bill of lading solely on behalf of carriers by water, when they participate in transportation subject to the act, might be proper in respect of transportation from port to port, or to transportation of such other character as does not fall within the Cummins amendment. With such transportation we have nothing to do, but it is our opinion that, as applied to the transportation by a water carrier under an arrangement with a railroad for common control and continuous carriage or shipment, the proposed rule would be in contravention of the Cummins amendment and therefore null and void.

We can not approve its incorporation in the proposed uniform bill of lading.

#### PART 2.—THE EXPORT BILL OF LADING.

##### JURISDICTION OF THE COMMISSION.

This proceeding, so far as it involves an inquiry relative to export bills of lading and questions appertaining thereto, presents, in some respects, an original field of investigation by the Commission, since no investigation directed specifically to that subject has been conducted heretofore by it. Questions relating to such bills have come incidentally before the Commission in other cases, but usually upon questions involving issues of undue preference or prejudice in the practices of the carriers.

By reason of its peculiarities of form and substance the export bill stands somewhat apart from the domestic and live stock bills. The Commission has no authority to require of carriers the issuance, as such, of joint through export bills on traffic destined to nonadjacent foreign countries, because it has no authority or jurisdiction over the carriers from the port of export and could not prescribe the conditions to be written into a bill of lading covering the transportation by such carriers, which conditions, of course, constitute an essential part of the contract for through transportation; but, as was said in *Galveston Commercial Asso. v. A., T. & S. F. Ry. Co.*, 25 I. C. C., 216, this does not mean that the Commission may not, in a proper case, exercise its authority over the inland carrier to the port. While its authority over bills to nonadjacent foreign countries is, as already indicated, more limited and attaches more indirectly than in the case of bills covering domestic interstate traffic, or traffic to an adjacent foreign country, it nevertheless does have authority over the rules, regulations, and practices, of inland carriers subject to the act, when, and if,

they join in through bills of lading to nonadjacent foreign countries, and it requires such rules and regulations to be published and filed. (Conference Ruling No. 378.)

The transportation of traffic from an inland point to a port of export, for export, is subject to all the provisions of section 1 of the act. This is true even when the transportation to the port is performed wholly within the confines of the state in which it originates and whether the traffic be carried on local or on through bills of lading. *Red River Oil Co. v. T. & P. Ry. Co.*, 23 I. C. C., 438; *Texas & Pac. Ry. Co. v. Railroad Com'n of Louisiana*, 183 Fed., 1005; *So. Pac. Terminal Co. v. Int. Comm. Comm.*, 219 U. S., 498. Not all the provisions of the act, however, are applicable to export traffic. The Carmack amendment, as we have seen, applied only to transportation "from a point in one state to a point in another state," but the provisions of the Cummins amendments include "transportation from a point in one state or territory or the District of Columbia to a point in another state, territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor."

The principal differences between the carriers and the shippers with respect to the terms and conditions which should, or should not, be incorporated in the export bill seem to arise (1) from the question whether or not the Carmack and Cummins amendments apply to traffic to a nonadjacent foreign country, (2) whether the rail carrier in delivering at its terminus, or at the end of its haul, may be treated as delivering to a consignee or his agent, or must be treated as delivering to a connecting carrier.

The Cummins amendment is of comparatively recent enactment and our attention has not been directed to any judicial decisions in respect of its provisions that point the way to a determination of the question whether or not it applies to foreign commerce to a nonadjacent foreign country. On the other hand, the application of the Carmack amendment has been considered in a number of cases and it is in the light of these decisions that we must consider the similar questions relative to the effect and application of the Cummins amendment. In *Houston East & West Texas Ry. Co. v. Inman, Akers & Inman*, 63 Tex. Civ. App., 556, involving the question of the application of the Carmack amendment to a shipment of cotton from a point in Texas to a port in Germany, the court having occasion to consider the language of the amendment and to construe the meaning of the word "state" held:

This language is clear and unambiguous, and the prohibition against the right of a connecting carrier to limit its liability to loss or damage occurring on its own line is only applicable when the shipment is from "a point in one state to a point in another state." The use of this language excludes the idea that Congress intended to prohibit such contracts when the shipment was to a foreign country.

The word "state," as used in the constitution of the United States, has been uniformly construed to mean a constituent member or part of the federal Union having an independent local governmental organization, but as used in the statutes and treaties of the United States it has been construed to include territories of the United States, and also foreign countries or states when such construction is required by the context of the act or instrument, and is necessary to effectuate its evident purpose. \* \* \*

We think it clear from an examination of the entire act that the word "state," as used in the amendment in question, was used in its limited constitutional sense, and was intended to mean a state of the federal Union. Other portions of the act are expressly made applicable to shipments from "any state or territory or the District of Columbia to any other state, territory or District of Columbia, or to any foreign country," showing that Congress did not understand or intend that the word "state," as used in the amendment, should include a foreign state or country, as well as a state of the Union.

In *J. H. Hamlen & Sons Co. v. Illinois Cent. R. Co.*, 212 Fed., 324, which was an action growing out of a transaction in which export bills of lading had been issued to cover shipments from a point in the United States to Buenos Aires, Argentine Republic, through the port of New Orleans, the court said at page 326:

The bills of lading expressly provide that the carrier issuing the same only issued them on its own behalf over its own lines, and as agent for the connecting lines, without a joint, but several, liability, and as the Carmack amendment applies only to transportation between the states, and not to foreign countries, the defendant is clearly not liable under the bill of lading, even if it had been the initial carrier which had issued the bill of lading, which it was not, \* \* \*.

In its report in *The Cummins Amendment*, *supra*, page 693, the Commission held that the Cummins amendment did not apply to export and import shipments to and from foreign countries not adjacent to the United States for the reason that—

while specifically stating that its terms shall apply to property received for transportation from certain points to certain other points, it makes no reference to shipments from a point in the United States to a point in a nonadjacent foreign country, or from a nonadjacent foreign country to a point in the United States.

In *Brunswick-Balke-Collender Co. v. T., S. & M. Ry. Co.*, 44 I. C. C., 598, 600, property, which was delivered to the initial carrier for transportation from Muskegon, Mich., to Mexico City, Mexico, via inland carriers to New Orleans, thence via steamer to Vera Cruz, Mexico, was damaged by fire after loading on the steamer at New Orleans and before it left the dock. The Commission, having occasion to consider whether or not the Cummins amendment was applicable to the shipment, referred to the fact that the Carmack amendment mentioned only transportation "from a point in one state to a point in another state," and said:

This provision was extended by the Cummins amendment, effective June 2, 1915, so as to include and apply to property received for transportation "from any point in the United States to a point in an adjacent foreign country."

\* \* \* While it is true that this shipment moved from a point in one state to a point in another state of the United States in reaching the port of export, its essential character was that of "foreign commerce," or *property received for transportation to an adjacent foreign country*; and that Congress did not regard the Carmack amendment as applicable to such shipments may be inferred from the fact above indicated that the provisions of that amendment were extended by the Cummins amendment to specifically apply to commerce to an adjacent foreign country.

Applying the rationale of these cases to the question before us, it seems evident that it was not the intention of Congress to make the Cummins amendment applicable to traffic to a nonadjacent foreign country. There is a clear distinction between "interstate" and "foreign" commerce in the wording of the act throughout, and in the definitions of the courts in construing these terms, whether or not the cases arise under the act to regulate commerce. Transportation in interstate commerce, as used in the act, means the transportation of commodities between, or among, the states, territories, etc. Transportation in foreign commerce, as used in the act, means the transportation of commodities between a point in the United States and a point in a foreign country.

The deduction seems clear and inevitable that transportation from a point in the United States to a point in a nonadjacent foreign country can not be brought within the specification of the Cummins amendment of commerce "from a point in one state or territory or the District of Columbia to a point in another state, territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country." For obvious reasons, not necessary to enlarge upon, it seems equally clear that commerce from a point in the United States to a point in a nonadjacent foreign country moving wholly intrastate from the point of shipment to a port of export is not within the purview of the amendment. This interpretation is supported by the holdings of the courts in *St. Louis, I. Mt. & So. Ry. Co. v. Starbird*, 243 U. S., 592, and *Aldrich v. Atlantic Coast Line R. Co.*, 104 S. C., 364.

#### NATURE AND FUNCTIONS OF THE EXPORT BILL OF LADING.

Considered as a receipt for the goods the export bill is substantially similar to the domestic bill. As a contract to transport, however, it has many points of difference. The undertaking with respect to transporting the property is that it is—

to be carried to the port (A) of \* \* \*, and thence by \* \* \* to the foreign port (B) \* \* \*, and to be there delivered in like good order and condition as above consigned, or to consignee's assigns, or to another carrier on the route to destination, if consigned beyond said port (B), \* \* \*.

In consideration of the rate of freight herein named, it is hereby mutually agreed by each carrier, severally but not jointly, that the service to be performed by it hereunder shall be subject to the conditions not prohibited by law, whether printed

or written, herein contained, which are hereby agreed to by the shipper and by him accepted for himself and his assigns.

The form of signature on the proposed bill specifies that the agent for the carriers signs on behalf of them severally, but not jointly. The form also provides for signature by the shipper, or his agent; the declaration on behalf of the shipper being that "I (we) accept all the conditions of this bill of lading."

The shippers object not only to the proposal that the carriers shall be bound only severally, and not jointly, but also to the unconditional acceptance of all the conditions to which they are asked to subscribe. The through export bill of lading is not regarded by the Commission as a joint contract or undertaking for the through carriage of property from an interior point in this country to a foreign port, but merely as an instrument combining, for the convenience of the shipper, the separate and several contracts of the rail carriers to the American port and the ocean carrier beyond. *New York Produce Exchange v. B. & O. R. R. Co.*, 46 I. C. C., 666, 670. It must clearly separate the liability of the rail and ocean carriers and show the published rate of the inland carrier. The publication of such rate does not in any manner limit the very valuable privilege of through billing. *Cosmopolitan Shipping Co. v. Hamburg-Amer. Packet Co.*, 13 I. C. C., 266, 281.

The advantages of the through export bill to the shipper are important. Being a bill for through transportation, more favorable demurrage rules apply at the port than apply on domestic traffic. Moreover, if export traffic were moved to the port under a domestic bill of lading, the shipper would be obliged to take out a ship's bill of lading. This would often be a great disadvantage in financing his operations, for he could not draw a draft against his foreign customer until he had gotten his ship's bill of lading, whereas the through export bill may be negotiated immediately, as is the common custom.

In discussing the proposed export bill it is necessary, therefore, to keep in mind the limitations referred to, and also the advantages to the shipper and the commerce of the country in having a negotiable form of export bill.

#### CONDITIONS OF THE EXPORT BILL OF LADING.

The proposed bill contains the general condition that "any alteration, addition or erasure herein which shall be made without an indorsement hereon signed by the agent of the carrier issuing this bill of lading shall be without effect, and this bill of lading shall be enforceable according to its original tenor." This provision, concerning which there is no controversy, is in accordance with the provisions of section 13 of the bills of lading act.

*Section 1, clause 2, differences in elevator weights.*—By this section it is provided that the carrier shall not be liable for “differences in the weights of grain, seed, or other commodities caused by \* \* \* or discrepancies in elevator weights.” This provision is identical with that proposed in the domestic bill and considered *ante*. The reasons which, in our judgment, required the condemnation of the rule there apply here, and it will be eliminated from the form to be approved by us.

*Section 1, clause 3, liability of carrier as insurer and warehouseman for loss, damage, or delay caused by fire.*—This provision, likewise identical with that in the domestic bill, reads:

For loss, damage or delay caused by fire occurring after forty-eight hours (exclusive of Sundays and legal holidays) after notice of the arrival of the property at the port of export has been duly sent or given, the carrier's liability shall be that of warehouseman only.

For reasons there stated the phraseology prescribed in the domestic bill, with such modification as is appropriate to export traffic, should be employed in the export bill.

*Section 1, clause 5, transportation in open cars.*—This provision is identical with that proposed to be inserted in the domestic bill and which we there condemned. Although, for some reason, the provision in the export bill is not attacked as it was in the domestic bill, we conceive of no reason why it is any more defensible or justifiable here than in the domestic bill.

In part for the reasons stated in discussing its proposed insertion in the domestic bill, and further because we find that it would be unjust and unreasonable, it will be eliminated from the export bill.

*Section 2, clauses 1 and 2, agency of issuing carrier—proposed exemption of participating carrier for liability for loss, damage, or injury to property not occurring on its own line.*—These two clauses, which must be considered together, provide:

In issuing this bill of lading this company agrees to transport only over its own line and acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its own water line or its portion of the through route, nor after said property has been delivered to the next carrier.

The declared purpose of this section is to limit the contract of the issuing carrier to its own line, and to provide that no participating carrier in the through route shall be liable for loss, damage, or injury not occurring on its own portion of the route, or after the property shall have been delivered to the next connecting carrier. The carriers' contention, as stated on brief, is that the provisions of the Cummins amendment have no application to shipments carried under *this form* of bill of lading, as it is not used on shipments to adjacent foreign countries.

Such a limitation if included in a bill of lading issued to cover a shipment to a point in an adjacent foreign country would be unlawful and void under the terms of the Cummins amendment.

The shippers object to the retention of this clause in the bill and propose that the entire section shall be eliminated. The proposal of the shippers goes beyond the necessities of the situation, however, for while the carrier may not make such a limitation in respect of interstate traffic within this country, nor in respect of traffic to an adjacent foreign country, it may, in respect of export traffic to non-adjacent foreign countries, still enjoy its common law right to contract for such a limitation of its liability. Congress has not sought to take this right from it. While the carrier is bound to issue to the shipper a bill of lading on a shipment destined "from a point in the United States to a point in an adjacent foreign country," the law does not say that, in form, such a bill of lading shall be an "export" bill. We think, however, that the matter should be removed from the field of controversy by inserting, as a general condition of the bill of lading, supplementary to the one already referred to, the following:

This bill of lading is not to be used on traffic from a point in the United States destined to a point in an adjacent foreign country.

*Section 3, clause 1, transportation to be only with reasonable dispatch unless by specific agreement indorsed on the bill.*—Section 3, clause 1, reads as follows:

No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch unless by specific agreement indorsed hereon.

While no objection is raised to the provisions of this clause, we think that the reservation by the carriers of the right to grant expedited service by special agreement indorsed on the bill of lading, as contained in the words "unless by specific agreement indorsed hereon" is objectionable. Thus it would be possible for certain favored shippers through special indorsements on their bills of lading to secure special and expeditious handling of their shipments, possibly to the undue prejudice and disadvantage of their less favored competitors.

For this reason we are of the opinion these words should be eliminated.

*Section 3, clause 3, measure of carrier's liability for loss or damage.*—The carriers propose the following:

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if paid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or

tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

The shippers propose as a substitute for this provision the following:

The amount of any shortage (loss of property in whole or in part) for which any carrier becomes liable shall be computed at the value of the property at the place and time of shipment under this bill of lading, including freight charges, if paid; unless a lower value has been agreed upon or is determined by the classification or tariff schedule upon which the rate is based, in either of which events such lower value shall be the maximum price to govern such computation. And for any damage or delay to property transported hereunder, the amount shall be the loss sustained by the owner of the property by reason of said damage or delay.

It will be noted that the shippers' proposal differs from that of the carriers in only one material respect, namely, that in the event of damage or delay to property the amount of liability "shall be the loss sustained by the owner," which at common law is computed on the basis of the value at point of destination. However, as we have noted, the provisions of the Cummins amendment apply only to such export shipments as are destined to "a point in an adjacent foreign country." To shipments destined to a nonadjacent foreign country the provisions of this amendment do not apply, and our jurisdiction over the issuance, form, and substance of bills of lading covering such shipments is limited to the provisions which govern the inland or coastwise transportation to the port. It has been the practice of the carriers for many years to provide for the restriction of the amount of their liability to the value at point of origin in both their export and domestic bills of lading. They assert that the value at point of origin can be in most instances definitely and accurately determined, while the value at point of destination is often conjectural and inflated by anticipatory profits, involving frequent litigation in determining the measure of damages. We are of the opinion that the carriers' proposal in question is not shown to be unreasonable. However, we believe that the words "including loss or damage arising from delay" should be inserted after the word "damage" in the first line thereof, so that the same would read as follows: "The amount of any loss, damage, including loss or damage arising from delay, for which any carrier is liable, etc."

*Section 5, clause 1, carrier's liability as warehouseman after 48 hours.*—The purpose of this provision is to effect, or secure, to the carrier the same exemption or limited liability at port (A) that is sought to be obtained by the proposal in a corresponding section of the domestic bill heretofore discussed. The only difference in phraseology is that which makes the proposed provision appropriate to transportation to a port of export instead of other destination. The shippers propose with respect to this provision, as they did with



respect to the one in the domestic bill, that it be eliminated without substitution of any kind.

The theory upon which the shippers' objections to the condition here proposed are primarily founded is that the export bill is a joint, and not several, contract on the part of the participating carriers for through transportation and that so regarded there can be no suspension or interruption of the transportation, and therefore no period of time at the port when neither the inland nor ocean carrier assumes the liability of a carrier for the protection of the property; that is, that there can be no period of time during which both the inland and the ocean carrier may claim to be divested of liability other than that of warehouseman. But with this view we can not agree. The export bill is not a joint contract for through transportation from the inland point in this country to the foreign destination and the act to regulate commerce does not impose upon the carriers subject thereto any obligation to issue such a bill. The particular objections urged to the proposed condition are (1) that it tends to impair or destroy the negotiability of the bill; and, (2) (this is really involved in and constitutes in part the basis for objection (1) just stated), that in the event of delay or inability to deliver the shipment to the ocean carrier within the free time allowed by the inland carriers' tariffs the shipment may become subject to storage and other port charges which can not be definitely known to the shipper at the time he makes his sale or shipment, and which the foreign customer refuses to assume or pay if his contract of purchase is made c. i. f. It is also urged that the proposed section would adversely affect the insurance policies of the shipper, or would force the shipper to take special insurance. Witnesses testified in support of these objections.

We have considered the subjects of free time allowances, storage, and other port charges in other cases. In *Export Freight Free Time*, 47 I. C. C., 162, decided November 12, 1917, we found that the carriers' proposal to reduce the free time allowed on export traffic from 15 days to 5 days at the north Atlantic ports and from 10 days to 5 days at the Gulf ports was not justified but that under the circumstances then existing the free time at the north Atlantic ports might reasonably be reduced to 10 days and at the Gulf ports to 7 days. In *New York Produce Exchange v. B. & O. R. R. Co.*, *supra*, decided October 1, 1917, we said with respect to the assessment of storage charges at the port of New York in cases where the time which elapsed between the arrival of an export shipment by rail and its delivery to the ocean carrier exceeded the free time allowance of 15 days that as a matter of law neither the rail nor the ocean carrier is liable for the storage charges at the port. And further, page 671:

The question whether such charges should be assessed is squarely presented and has been fully and thoroughly briefed and argued in No. 4844, *In the Matter of Bills of Lading*. Without prejudice to any conclusion that may be announced in that case, we hold upon this record that the assessment of such charges has been justified.

Neither upon the facts shown of record in this case, nor upon the arguments made thereon, can we find that the assessment of storage charges, as such, under reasonable regulations, is unjust or unlawful.

The proposed condition is, however, subject to this objection, that it undertakes to limit the carrier's liability to that of warehouseman only after 48 hours after its arrival at the port, and reserves the right, among other things, to remove it and store it in a public warehouse "at the owner's risk." For the reasons heretofore stated in connection with the domestic bill we must disapprove the proposed condition in these aspects.

The record does not show that the operation of the condition objected to seriously impairs, much less destroys, the negotiability of the export bill of lading. As the law now stands, carriers can not be required to issue a through export bill of lading to the foreign destination binding jointly upon them and subjecting them to the same limitations that the law imposes upon them in respect of the issuance of domestic bills of lading applicable on interstate traffic and on traffic destined to adjacent foreign countries.

We disapprove the condition as proposed, but we approve a condition reading as follows:

Property not removed by the exporting carrier, or the party entitled to receive it, within the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at port (A) has been duly sent or given, and after placement of the property for delivery at port (A), or tender of the property for delivery upon order of the party entitled to receive it has been made, may be kept in vessel, car, depot, or place of delivery of the carrier or warehouse, subject to the tariff charge for storage and to the carrier's responsibility as warehouseman, only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at port (A), or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

*Section 5, clause 2, receipt or delivery of property at private or other sidings, wharves, or landings, etc.*—This clause, which is identical with a corresponding clause of the domestic bill, heretofore discussed, reads as follows:

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent, shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and, except in case of carrier's negligence, when received from or delivered on private or other sidings, or on such wharves or landings shall be at owner's risk until the cars are attached to and after they are detached from trains, or until loaded into and after unloaded from vessels.

The shippers object to the portion of the condition printed in italics and propose that it be eliminated without substitution. There is nothing of record to indicate that the objectionable part of the condition stated above is any more reasonable or defensible when applied to export traffic than when applied to domestic traffic. It seems to require no further consideration and for reasons already stated in discussing its proposed inclusion in the domestic bill we find here, as there, that the proposal expressed in italics is and would be unreasonable and should be omitted from the bill. It is therefore disapproved.

*Section 9, clauses 1, 2, 3, 4, 5, and 6, limitations of liability of water carriers.*—Since, as we have already held herein, the Cummins amendment does not apply to transportation from a point in the United States to a point in a nonadjacent foreign country, the carriers are not precluded from incorporating in the export bill of lading reasonable provisions applicable exclusively to water carriers. The shippers object to the incorporation of the proposed clause in the export bill upon the same grounds that they opposed its inclusion in the domestic bill. We need not repeat those arguments.

We have given consideration to the conditions and stipulations proposed by the carriers and to the objections and counter stipulations proposed by the shippers. We are convinced that many of the stipulations in respect of the water carriers' exemption from liability proposed in their behalf are unreasonable and indefensible, and, in many instances, in violation of the law. The objections of the shippers are in many cases ill considered and equally unreasonable. We think that reasonable conditions and lawful limitations of liability may with propriety and advantage be incorporated in the export bill, and upon consideration thereof we find that the following would be just and reasonable:

SEC. 9. Except in case of diversion from rail to water route, as provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemption provided by statute and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances, whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall have the liberty to call at any port or ports, to tow and be towed, to transfer, transship, or lighter, to load and discharge goods at any time, and assist vessels in distress, to

deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence, such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

If the shipowner shall have complied with the provisions of section 3 of the Harter act, it is hereby agreed that the owners or consignees of the cargo shall contribute with the shipowner in general average, and shall pay any salvage or special charges properly incurred, even though the necessity for the sacrifice or expenditure was brought about by fault in navigation or management of the ship.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

*Section 10, clause 1, exemptions from liability for delay, and reduction of liability to that of warehouseman, while the property is awaiting further conveyance.*—Section 10, clause 1, as proposed by the carriers, reads as follows:

*No carrier shall be liable for delay, nor in any respect other than as warehouseman, while the property awaits further conveyance, and in case the whole or any part of the property specified herein be prevented by any cause from going from the port of export in the first vessel of the ocean line for which intended leaving after arrival of such property at the said port, the carrier hereunder then in possession is at liberty to forward said property by succeeding vessel of said line, or, if deemed necessary, by any other vessel.*

The shippers object to the words italicized above and suggest their elimination without any substitution in the place thereof. Their objection is based upon the theory that as an export shipment is a through shipment from an inland point of origin to a foreign destination, necessarily requiring transportation over a part of the route by a foreign carrier, the contract of carriage is a joint and indivisible one, instead of a separate and distinct contract on the part of each carrier participating in the transportation. However, as already stated, we are of the opinion that the provisions of the Carmack and Cummins amendments are inapplicable to export shipments destined to points in nonadjacent foreign countries, and it is only by the provisions of these amendments that carriers are prohibited from restricting their liability for loss, damage, or injury not occurring on their respective separate lines. In the absence, therefore, of any statutory provision, a carrier is within its legal rights in contracting against liability for a delay not occurring on its own line not the result of its negligence, and, where proper tender of a shipment has been made to a connecting line, to reduce its liability thereafter to that of a warehouseman for the period such shipment is awaiting further transportation. We are of the opinion that the words in italics are not illegal, but they are unreasonable in that they are

capable of an interpretation which would exempt all of the carriers from delay, however caused or wherever occurring. We find, therefore, that the following language should be adopted instead of that proposed by the carriers:

No carrier shall be liable for delay not occurring on its own line, or the result of its negligence, nor in any respect other than as warehouseman, while the property awaits further conveyance after proper tender of delivery to the next connecting carrier has been made, and in case the whole or any part of the property specified herein be prevented by any cause from going from the port of export in the first vessel of the ocean line for which intended leaving after arrival of such property at the said port, the carrier hereunder then in possession is at liberty to forward said property by succeeding vessel of said line, or, if deemed necessary, by any other vessel.

*Section 10, clause 2, termination of inland carrier's liability upon delivery made in accordance with existing arrangements at the port (A).*—This clause reads as follows:

This contract is executed and accomplished, and all liability hereunder terminates upon the delivery of the said property to the exporting steamer, her master, agents, or servants, or to the exporting steamship company, *or subject to existing delivery arrangements, if any, on the pier usually used by the exporting steamer at the port of export, whether or not the same may be the property of or used as a warehouse by the inland carrier also,* and the inland freight and all other charges hereinbefore provided for shall be a first lien on the property, and shall be due and payable by the steamship company or vessel.

The shippers object to the provision stated in italics above, apparently on the theory that an interim might thereby be permitted during which no carrier would assume liability other than as a warehouseman. This does not necessarily follow. There are, of course, circumstances and conditions existing at some ports where there is necessarily an intermediary between the inland carrier and the ocean carrier. But the provision objected to relates to the local arrangement existing at some ports by which the inland carrier makes delivery to the ocean carrier and the latter accepts the shipment for further transportation. Obviously, when the inland carrier shall have made a proper delivery to the connecting ocean carrier, the former is relieved from and the latter assumes the carrier liability. Delivery by the inland carrier to the ocean carrier in accordance with the legal custom or usage of the port, or arrangement between them, implies acceptance of the goods by the ocean carrier. A case in point is that of *Washburn-Crosby Co. v. Boston & A. R. R.*, 180 Mass., 252, where a railroad company's pier was jointly used by it and a steamship company with which it formed a connection. The steamship company by an existing arrangement used and occupied a part of the pier for the purpose of receiving freight deposited upon it by the railroad company and intended for further transportation by the steamship line. It also appeared that the unloading of freight in such a manner was regarded by both companies

as a delivery to the steamship company. A quantity of flour which the railroad company had unloaded on the pier to await transportation by the steamship company was destroyed by fire. Suit was brought against the railroad company for its value, and the question was whether the facts showed a delivery. In deciding the question the court said:

If, then, as might have been found, it was understood in advance that as soon as goods were left upon the wharf by the railroad the steamship company was free to take them at its pleasure and that it was expected to take notice of their presence and to assume responsibility for them without more special notification, the deposit of the flour on the wharf was an actual delivery without more.

It was held therefore that a delivery had been shown and that the railroad company was not liable. It by no means follows that the owner of the goods may not recover for the loss from the connecting carrier to whom they had been constructively delivered. He may pursue another in whom was the last actual possession. But if, as between the carriers themselves, the one to whom delivery has been constructively made for further carriage is the responsible party, there is no reason why that carrier should not be liable also to the owner of the goods. 1 *Hutch. Carr.* (3d Ed.), §138.

As we understand the law, the carriers may properly contract for the exemption contemplated in this clause. It does not appear from all the record that it is in any wise unreasonable and it is therefore approved.

#### MISCELLANEOUS MATTERS.

At the inception of this proceeding and during its pendency, issue was made in respect to certain features of the negotiability or assignability of bills of lading. The enactment of the bills of lading act, 39 Stat. L., 538, comprehensively covers all these matters, we believe, and no disposition of them remains to be made in this report.

The question of time for filing claims and of notice of intent to file claims presented certain issues at the inception of the hearing. The Cummins amendment provides that—

It shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years: *Provided, however,* That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as condition precedent to recovery.

Since the proceeding was instituted the carriers, at the suggestion of the Commission, have modified the rigor of their requirements in respect of such matters, and it is now provided in the proposed domestic bill of lading that—

Except where the loss, damage, or injury complained of is due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence,  
§2 I. C. C.

as conditions precedent to recovery, claims must be made in writing to the originating or delivering carrier within six months after delivery of the property (or in case of export traffic, within nine months after delivery at port of export), or in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed; and suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property, or, in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed.

The export bill provides that claims must be filed within nine months.

These seem to be reasonable provisions in respect to the time of filing claims and, so far as we are advised, they are not objected to by any of the shippers. There are now pending before the Commission formal complaints in two cases, *Price & Co. v. A., T. & S. F. Ry. Co.*, No. 8369, and *Blackburn & Co. v. A. A. R. R. Co.*, No. 8607, that were heard, briefed, and argued in conjunction with this proceeding. They involve certain issues with respect to transactions occurring before the carriers established the more liberal rules as to time. They will be disposed of in a separate report, and what is here said should be understood to be without prejudice to the disposition of those cases or any questions necessarily connected therewith.

As stated in an earlier part of this report, certain interests have advocated the prescribing of special forms of bills of lading for perishable products and for coal. We are not convinced, upon consideration of all the facts of record and the arguments made in advocacy of such bills, that they are essential. It is believed that the uniform bills prescribed will be adequate to care for any peculiar requirements of such traffic.

A uniform live stock contract will be prescribed in a supplemental report and order as soon as practicable after consideration of the record which has been more fully developed through the medium of a further hearing had with that purpose in view.

The Commission has not undertaken to deal with all the multiplicity of suggestions that have been made by the parties during the course of the hearing. A great many of them can not properly be made the subject of conditions in the bill of lading. Many others are matters of carriers' practices which they should henceforth conform to the rulings herein so far as the latter are applicable. Still others are or will become questions of interpretation.

An appropriate order will be entered in connection with this report prescribing the forms of domestic and export bills of lading which we find would be just and reasonable to be used upon the lines of all common carriers subject to the act who, together with the Director General of Railroads, have been heretofore served with notice and by due process have been made parties respondent herein.

# COND

## CARRIERS' PROPOSALS WITH WHICH SHIPPERS ARE

B3C. 1. (1) The carrier or party in possession of any of the property herein described  
 (2) No carrier or party in possession of any of the property herein described shall be  
 in default of law, or the act or default of the shipper or owner, or for differences  
 in weight, or for loss, damage, or delay caused by fire occurring after 48 hours (as  
 at port of export (if intended for export) has been duly sent or given, the carrier's liability at  
 possession (and the burden to prove freedom from such negligence shall be on the carrier (or  
 or delay occurring while the property is stopped and held in transit upon the request of the  
 property, or from riots or strikes, or for country damage to cotton. (5) When in accord  
 shipped the property is transported in open cars, the carrier or party in possession (except in  
 had been carried in closed cars) shall be liable only for negligence, and the burden to prove it  
 (6) In case of guarantee the property may be discharged at risk and expense of owner  
 or for the carrier's dispatch at nearest available point in carrier's judgment, and in any su  
 be returned by carrier at owner's expense to shipping point, earning freight both ways.  
 (8) The carrier shall not  
 or done by guarantee regulations or authorities, not for detention, loss, or damage of any  
 except in case of negligence, for any mistake or inaccuracy in any information furnished  
 shall hold the carrier harmless from any expense they may incur or damages they may  
 into any place against the guarantee laws or regulations in effect at such place.  
 B3C. 2. (1) No carrier is bound to transport said property by any particular train (or  
 unless by special agreement inured hereon. (2) Every carrier shall have the right in ca  
 of shipment and the point of destination; but if such diversion shall be from a rail to a  
 by rail.  
 (3) The amount of any loss or damage for which any carrier is liable shall be computed  
 of lading, including the freight charges, if paid; and where the actual value of the property ha  
 shall be arrived at from the bona fide invoice price, if any, to the consignee. (4) Provided, ho  
 this bill of lading the value of the property, no carrier shall be liable beyond the amount s  
 further. In all cases not prohibited by law, that where a lower value than actual value be  
 the classification or tariffs upon which the rate is based, such lower value shall be the r  
 from negligence.  
 (6) Except where the loss, damage, or injury complained of is due to delay or dam  
 conditions precedent to recovery, claims must be made in writing to the originating or del  
 within nine months after delivery at port of export, or in case of failure to make delivery  
 for delivery has elapsed; and suits for loss, damage, or delay shall be instituted only  
 delivery, then within two years and one day after a reasonable time for delivery has ela  
 (7) Any carrier or party liable on account of loss or damages to any of said property s  
 of said property, so far as this shall not avoid the policies or contracts of insurance: (8)  
 B3C. 3. (1) Except where such service is required as the result of carrier's negligence,  
 in handling or forwarding, and shall not be held responsible for deviation or unavoidable  
 as a railroad, public or licensed elevator, may (unless otherwise expressly noted herein,  
 the same kind and grade without respect to ownership (and prompt notice thereof shall)  
 in addition to all other charges hereunder.  
 B3C. 4. (1) Property not removed by the party entitled to receive it within 48 hours (ex  
 be kept in vessel, car, depot, or place of delivery of the carrier or warehouse, subject to the tariff  
 of the carrier, stored in a public or licensed warehouse at the place of delivery or other a, it  
 part of the carrier, and subject to a lien for all freight and other lawful charges, including a r  
 allowed by law or as serving said rule affecting cut surface or storage.



numbering or addressing of packages or description of their contents.

ing her destination by Quarantine, the carrier may discharge the goods into any depot or lazaretto, and  
 ct, and all the expenses thereby incurred on the goods shall be a lien thereon.

ely on arrival and discharge continuously, any custom of the port to the contrary notwithstanding, the  
 der for discharge immediately on arrival, and if the goods be not taken from the steamer by the consignee  
 ster or steamer's agent to be at liberty to enter and land the goods, or put them into craft or store at the  
 vered and steamer's responsibility ended, but the steamer and carrier to have a lien on such goods until  
 and charges, the proceeds fail to cover said freight and charges, the carrier shall be entitled to recover the  
 ods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the  
 steamer reaches her destination, the price shall be the market price at the port of destination on the day  
 steamer being only responsible for such part of the goods as have been actually delivered to said steamer  
 y loss or damage that may have occurred before such delivery, while agreeing to promptly present to  
 tage or loss or damage that may have occurred before delivery at the said port.  
 ery be at shipper's risk of loss or damage not happening through the fault or negligence of the said owner,  
 t to the contrary notwithstanding.

he steamer's consignee in exchange for delivery order.  
 not lost.

up in single packages addressed to one consignee, pay full freight on each parcel.

weight landed from ocean steamer, unless otherwise agreed to or herein otherwise provided, unless the car-  
 nland freight and charges paid on wheat, peas, maize, or other grain, or seed, or other bulk articles, from  
 tination on the weight delivered on board ocean steamer.

articles specified herein be prevented by any cause from going in the first steamer leaving after the arrival  
 d them by succeeding steamers employed in the steamship line, or if deemed necessary by said carrier it

ect to all conditions expressed in the regular forms of bills of lading in use by the steamship company at  
 rt of destination not expressly provided for by the clauses herein.

transshipment to connecting carrier shall be at the risk of the owner of the goods, but at steamer's expense,  
 nates on due delivery to connecting carrier.

### III.

and until delivery at ultimate destination, if destined beyond that port, it is agreed that:  
 elivery should for any reason be suspended or interrupted, the carrier, at the option of the owner or con-  
 ward the goods to the nearest available port, this to be considered a final delivery; or to store them at the  
 until regular service to final port of destination is opened again.

conditions of the carrier or carriers completing the transit; the duty of notification above provided for shall  
 he transit, and no prior carrier shall be responsible for the fulfillment of that obligation.

owner, and consignee of the goods, and the holder of the bill of lading agree to be bound by all of its stipu-  
 as fully as if they were all signed by such shipper, owner, consignee, or holder.

s said ..... and

erally, but not jointly, hath affirmed to .....

s of lading, all of this tenor and date, one of which bills being accomplished, the others to stand void.

....., Agent.

charges herein described. ....

....., Agent

.....  
 (Shipper or Agent for Shipper.)

## CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

3561. *SWIFT & Co. v. S. P. Co. et al.* Charges for side track delivery within the switching limits of Los Angeles and San Francisco, Calif. *R. O'Hara* for complainant. *F. H. Wood* and *T. J. Norton* for defendants. Dismissed on request of complainant, March 3, 1919.

4199. *IN THE MATTER OF PIPE LINES.* Proceeding of investigation instituted by the Commission on its own motion into the rates, classifications, regulations and practices of corporations engaged in the transportation of commodities, except water, by pipe lines. *A. G. Gutheim* and *S. H. Smith* for the Interstate Commerce Commission. *A. L. Beaty, Greer & Minor, F. C. Proctor, J. M. Guffey, W. S. Fitzpatrick, C. L. Wallis, J. H. Hemphill, W. I. Lewis, J. G. Milburn, F. L. Crawford, C. O. Swain, C. D. Chamberlin, James Autrey, E. R. Perry, F. A. Parsons, M. Carey, and Mr. Mackay* for respondents. Good cause appearing therefor, proceeding discontinued, March 21, 1919.

4662. *IN THE MATTER OF THE ISSUANCE AND USE OF PASSES, FRANKS, AND FREE PASSENGER SERVICE.* Proceeding of investigation instituted by the Commission on February 5, 1912, in the above entitled matter. *A. T. Smith, A. E. Coleman, A. L. Boyd, J. W. VanSant, W. S. Curry, W. H. Swinney, and R. G. Curry* for the Interstate Commerce Commission. *F. M. Oliver* for *J. B. Way*. *W. F. Graham* for *W. C. Tubbs* and *J. Arthur Tubbs, W. B. Rodman, M. A. Walsh, J. F. Wright, G. B. Elliott, T. M. Cunningham, Jr., S. McDaniel, J. E. Hall, and A. Heyman* for various railroad companies. Good cause appearing therefor, proceeding discontinued, March 21, 1919.

4937. *JAMES BLACK DRY GOODS Co. et al. v. C., R. I. & P. Ry. Co. et al.* Rates on dry goods and other merchandise from eastern points to destinations in the state of Iowa. *G. M. Stephen* for complainants. *W. T. Hughes, W. H. Bremner, F. B. Townsend, J. H. Cherry, G. A. Kelly, R. H. Widdicombe, and A. F. Cleveland* for defendants. Dismissed on request of complainants, January 6, 1919.

5505. *BELTON MILLS et al. v. N. & W. Ry. Co. et al.* Rates on coal from mines on the Norfolk & Western in West Virginia to destinations in the state of South Carolina. *W. A. Wimbish* and *Y. B. Smith* for complainants. *J. F. Bullitt, R. T. Irvine, F. B. James, E. E. Williamson, C. Kimmich, E. C. Mahan, W. S. Bronson, and W. H. Taylor* for interveners. *L. H. Cocke, C. J. Rizzy, C. M. Owen, J. J. Campion, C. B. Northrop, L. Green, and H. G. Waring* for defendants. Dismissed on request of complainants, April 7, 1919.

5996. *PROVIDENCE BOARD OF TRADE v. N. Y., N. H. & H. R. R. Co. et al.* Minimum charge rule covering single consignments from Providence, R. I., to points on the Boston & Maine R. R. *G. W. Collier* for complainant. No appearances for defendants. Dismissed for lack of prosecution, February 4, 1919.

5942. *CONSOLIDATION COAL Co. et al. v. B. & O. R. R. Co.* Rules and regulations of the Baltimore & Ohio R. R., governing distribution of coal car equipment on the Monongahela division. *W. W. Glasgow, Jr., and J. W. Lord* for complainants. *F. Lyon* and *F. J. Kooser* for interveners. *W. A. Parker* for defendant. *C. C. Paulding*

for New York Central R. R. Co. No amendment having been filed making the Director General of Railroads a party defendant, complaint dismissed, January 6, 1919.

6174. MOUNT PLEASANT FERTILIZER Co. v. L. & N. R. R. Co. et al. Rates on fertilizer from Mount Pleasant, Tenn., to points in the state of Arkansas. *S. J. Bolton* for complainant. *J. M. Dewberry, E. D. Mohr, M. L. Clardy, H. G. Herbel, F. G. Wright, C. C. P. Rausch, W. F. Dickinson, J. E. Johanson, and R. D. Coleman* for defendants. Dismissed on request of complainant, April 7, 1919.

6363. ANDERSON-TULLY Co. v. St. L., I. M. & S. Ry. Co. et al. Rates on lumber and box material between Memphis, Tenn., and points in the state of Arkansas. *G. M. Stephen and S. J. Bolton* for complainant. *F. G. Wright, C. C. P. Rausch, R. D. Coleman, and T. Bond* for defendants. Dismissed on request of complainant, April 7, 1919.

6466. EADS WATER Co. v. A., T. & S. F. Ry. Co. et al. Class rate, subject to the minimum gallonage capacity of tank cars, on mineral water from Waukesha, Wis., to Kansas City, Mo. *J. E. Johnston* for complainant. *D. L. Meyers, A. F. Cleveland, and G. Williams* for defendants. Dismissed for lack of prosecution, April 7, 1919.

6842. BUICK MOTOR Co. et al. v. P. & R. Ry. Co. et al. Rates on bar steel from Pennsylvania and Ohio points to Detroit, Flint, and Saginaw, Mich. *J. B. Daish* for complainants. *A. Fries, H. W. Forward, T. H. Burgess, W. H. Spicer, W. W. Collin, Jr., J. J. Koch, J. T. Johnston, and F. B. Brown* for defendants. Dismissed on request of complainants, April 7, 1919.

6904. SCHAEFER & SON v. C. P. Ry. Co. et al. Rate on oats from Fort Williams, Fort Arthur, and Westfort, Ont., to Bushwick Station, Brooklyn, N. Y. *G. W. Jackson* for complainant. *McKenney, Flannery & Hitz, S. C. Pratt, O. E. Butterfield, T. H. Burgess, M. B. Pierce, and E. W. Beatty* for defendants. Dismissed for lack of prosecution, April 7, 1919.

7759. SCATTERGOOD & Co. v. W. R. R. Co. et al. Diversion charge on a shipment of corn from Elmira, Ohio, to Welland Junction, Ont., reconsigned to Deposit, N. Y., with instructions to hold at Hornell, N. Y., and later diverted to Honesdale, Pa. *J. K. Scattergood* for complainant. *M. B. Pierce* for Erie R. R. Co. Dismissed for lack of prosecution, April 7, 1919.

8041. BUSH TERMINAL R. R. Co. v. N. Y. C. R. R. Co. et al. Divisions of joint rates between the trunk lines and the Bush Terminal R. R. Co. on traffic between New York and points east of the Buffalo-Pittsburgh line. *W. N. Dyknam and A. E. Goddard* for complainant. *A. M. Schmidt, W. C. Breed, W. J. Quinn, and E. T. Horwill* for interveners. *P. McCollister, H. W. Bikle, T. H. Burgess, R. W. Barrett, C. M. Sheafe, Jr., D. D. Tomlinson, E. M. Snyder, and D. Swift* for defendants. Dismissed on request of complainant, February 4, 1919.

8241. WALSH & WEIDNER BOILER Co. v. A. G. S. R. R. Co. et al. Rate on a tower and tank material, k. d., from Chattanooga, Tenn., to Dawson, Tex. *O. L. Bunn* for complainant. *R. W. Fyfe* for defendants. Complaint satisfied. Dismissed, February 4, 1919.

8439. CITY OF SPRINGFIELD, TENN., et al. v. L. & N. R. R. Co. et al. Rates on unmanufactured tobacco from Springfield, Tenn., to Boston, Mass., New York, N. Y., Philadelphia, Pa., Baltimore, Md., Richmond, Va., New Orleans, La., and Pensacola, Fla. *R. L. Peck and Perkins Baxter* for complainants. *O. P. Anderson and W. A. Northcutt* for defendants. Dismissed for lack of prosecution, April 7, 1919.

8504. GOOD v. G. N. Ry. Co. Rate on pine lumber from Springdale, Wash., to Malta, Mont. *W. B. Riddle* for complainant. *J. F. Finerty* for defendant. Dismissed for lack of prosecution, February 4, 1919.

8595. JELICO GROCERY Co. v. L. & N. R. R. Co. et al. All-rail and rail-and-water rates on green coffee from Philadelphia, Pa., and New York, N. Y., to Jellico, Tenn., and all-rail rates from New Orleans, La., to Jellico. *J. V. Norman* for complainant.

*F. W. Gwathmey* and *E. D. Mohr* for defendants. Good cause appearing therefor, complaint dismissed February 11, 1919.

8746. ATLANTA FREIGHT BUREAU et al. v. S. Ry. Co. et al. Class rates between Pacific coast terminals and Atlanta, Ga., based on the Birmingham or Chattanooga combinations, and commodity rates on apples, beans, and peas, canned goods, citrus, deciduous and dried fruits, and edible nuts from Pacific coast terminals to Atlanta. *C. E. Cotterill* and *W. A. Wimbish* for complainants. *C. J. Rizey, jr., W. N. Proctor,* and *B. T. Booze* for defendants. Dismissed without prejudice on request of complainants, April 7, 1919.

8853. CANYON LUMBER Co. v. G. N. Ry. Co. et al. Switching charges on cars loaded on complainant's spur track at Everett, Wash., for interstate shipment via Great Northern Ry. No appearance for complainant. *F. G. Dorety* for Great Northern Ry. Co. Dismissed for lack of prosecution, April 7, 1919.

9014. LIBERAL COAL & MINING Co. v. St. L. & S. F. R. R. Co. et al. Rate on dead slack coal from Liberal, Mo., to Bartlesville, Okla. *H. R. Gilbert* for complainant. *C. S. Burg* and *T. Bond* for defendants. Complaint satisfied. Dismissed, February 4, 1919.

9170. NORTH AMERICAN COAL Co. v. MONONGAHELA Ry. Co. et al. Rates on bituminous coal from North American Siding, on the line of the Monongahela Ry. Co., in the Opekiska district of West Virginia, to various interstate destinations. *Goodwin & Reay* for complainant. *F. R. Cross* and *J. Stillwell* for defendants. Good cause appearing therefor, dismissed without prejudice, February 20, 1919.

9250. CUDAHY PACKING Co. v. D., L. & W. R. R. Co. et al. Refusal of defendants to make allowances to complainant for transferring imported fresh meats from vessels in New York harbor and loading in cars for shipment to various destinations. *C. O. Cornwell* for complainant. *F. W. Flott* for defendants. Complaint satisfied. Dismissed, March 3, 1919.

9252. NATIONAL LIVE STOCK EXCHANGE v. A. & R. R. R. Co. et al. Rates on stock or feeder cattle, hogs and sheep, between points throughout the United States. *C. B. Heinemann* for complainant. *H. L. Baird, E. D. Hotchkiss, W. J. Turner, G. E. Wicks, W. L. Louis, W. J. Mullin, Winston, Payne, Strawn & Shaw, C. Donnelly, S. S. Perry, E. Barton, E. W. Beatty, G. S. Hobbs, J. C. Bills, W. N. King, C. L. Andrus, J. N. Brown, G. Dunlap, J. Walton, T. A. Eaton, H. S. Garrett, R. A. Wells, W. G. MacEdward, F. H. Wood, Baker, Botts, Parker & Garwood, R. K. Minson, L. E. Hinkle, H. Moore, T. Bond, Hawkins & Franklin, H. A. Fidler, C. S. Burg, R. B. Scott, A. H. Lossow, E. W. Knight, G. A. Wingfield, W. A. Colston, W. A. Northcutt, H. Guio, H. A. Scandrett, G. H. Smith, J. C. Moran, M. R. Waite, C. B. Northrop, J. B. Sheehan, E. N. Clark, G. A. Suzford, T. G. Barwite, W. F. Sterley, J. T. Bowe, L. J. Freeman, G. Thompson, R. Dunlap, T. J. Norton, J. F. Finerty, W. H. Bremner, F. M. Miner, O. W. Dynes, W. F. Kinter, C. C. Wright, R. H. Widdicombe, T. H. Burgess, M. B. Pierce, E. E. Whitted, A. S. Brooks, D. Swift, J. M. Souby, Dines, Dines & Holme, W. F. Dickinson, C. E. Dewey, N. H. Loomis, A. P. Matthew, W. A. Parker, A. C. Spencer, W. A. Robbins, J. C. Murray, A. S. Halsted, N. S. Brown, B. Storey, D. Uphergrove, E. B. Perkins, A. L. Burford, S. Moore, R. W. Moore, A. P. Humburg, H. G. Herbel, F. G. Wright, C. B. Cardy, C. W. Durbrow, G. D. Squires, and F. B. Austin* for defendants. Dismissed on request of complainant, January 7, 1919.

9315. AMERICAN MAIZE-PRODUCTS Co. v. B. & A. R. R. Co. et al. Failure to include glucose as one of the grain products entitled to commodity rates from Roby, Ind., to points in Pennsylvania, Maryland, Virginia, Delaware, New Jersey, New York, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, and Maine. *Littleford, James, Ballard & Frost* for complainant. *G. S. Hobbs, E. D. Hotchkiss, S. S. Perry, J. C. Bills, Glennon, Cary, Walker & Howe, N. S. Brown, T. H. Burgess, M. B. Pierce, W. F. Kinter, L. E. Hinkle, D. Swift, W. J. Mullin, M. B.*

52 L. C. C.

*Johnson, H. H. Johnson, H. D. Palmer, R. W. Moore, and C. E. Dewey* for defendants. Dismissed on request of complainant, March 3, 1919.

9578. AMERICAN CARBOLITE SALES Co. v. N. P. Ry. Co. et al. Rate on carbide of calcium from Duluth, Minn.; to Grand Rapids, Mich. *J. S. Strate* for complainant. *A. H. Lossow, D. F. Lyon, and J. C. Bills* for defendants. Dismissed for lack of prosecution, April 7, 1919.

9677. EWAUNA BOX Co. v. S. P. Co. Rate on box shooks from Klamath Falls, Oreg., to certain points in the state of California. *C. McGown* for complainant. *F. H. Wood, C. W. Durbrow, G. D. Squires, and F. B. Austin* for defendants. Dismissed on request of complainant, February 4, 1919.

9687. COLUMBIA COTTON OIL Co. v. L. & N. W. R. R. Co. et al. Rates on cotton seed from Magnolia, Ark., and other points on the line of the Louisiana & North West R. R. Co., to Shreveport and Monroe, La. *C. W. McKay, W. Smith, and W. W. Boyd* for complainant. *S. S. Senne, E. Moulton, A. L. Burford, and J. R. McClurken* for defendants. Dismissed on request of complainant, March 3, 1919.

9708. ROYSTER GUANO Co. v. S. Ry. Co. Rates on commercial fertilizer from Norfolk, Va., to points in the state of North Carolina. *C. J. Collins* for complainant. *R. W. Moore and A. M. Bull* for defendant. Dismissed with consent of complainant March 3, 1919.

9710. INTERNATIONAL PAPER Co. v. B. & M. R. R. et al. Rates on paper box board, 1. c. 1., from Bellows Falls, Vt., to Hartford, Conn. *A. H. Campbell* for complainant. *W. A. Cole and S. S. Perry* for defendants. Dismissed on request of complainant, February 4, 1919.

9716. DUPONT WHOLESALE GROCERY Co. v. A. G. S. R. R. Co. et al. Class and commodity rates from St. Louis and other territories, to Houma, La. *B. E. Slawter* for complainant. *C. H. Owen* for defendants. Dismissed on request of complainant March 3, 1919.

9757. ASSOCIATED JOBBERS OF LOS ANGELES v. A., T. & S. F. Ry. Co. et al. Class and commodity rates from Los Angeles, Calif., to points in Arizona and New Mexico. *F. P. Gregson* for complainant. *Hawkins & Franklin, R. Dunlap, T. J. Norton, R. K. Minson, F. H. Wood, C. W. Durbrow, G. D. Squires, and F. B. Austin* for defendants. Dismissed on request of complainant, March 3, 1919.

9804. HALL-ZIMMERMAN COAL Co. et al. v. P., C., C. & St. L. R. R. Co. et al. Failure of defendants to supply sufficient coal cars to complainants' mines in the state of Indiana. *C. A. Royse and E. E. Gates* for complainants. *R. W. Ropiequet, J. A. Cooper, Jr., L. Taylor, M. F. Gallagher, and Cox, Adamson & Gallagher* for interveners. *J. L. Bowlus* for Public Utilities Commission of Illinois. *T. L. Freeland* for Local No. 2522, United Mine Workers of America. *E. H. Seneff, J. Stilwell, C. B. Cardy, and W. N. King* for defendants. No amendment having been filed making the Director General of Railroads a party defendant, complaint dismissed, January 6, 1919.

9812. ARKANSAS LUMBER Co. (INC.) et al. v. A., T. & S. F. Ry. Co. et al. Combination rates from Cloquet, Wesson, Fordyce, Millville, and Thornton, Ark., and Hodge and Bienville, La., to stations in Colorado, Kansas, Missouri, New Mexico, and Oklahoma. *G. F. Thomas* for complainant. *D. Head and E. C. Sides* for defendants. Complaint satisfied. Dismissed, January 7, 1919.

9944. AETNA EXPLOSIVES Co. v. C. R. R. Co. or N. J. et al. Rate on high explosives from Carnegie, Pa., to Jersey City, N. J. *G. G. Reynolds* for complainant. *G. R. Allen and M. S. Connelly* for defendants. Complaint satisfied. Dismissed, February 4, 1919.

10064. JACKSON IRON & STEEL Co. v. D., T. & I. R. R. Co. Switching charges between complainant's plant and the tracks of the Hocking Valley Ry. Co., at Jackson, Ohio. *J. D. Withgott* for complainant. *W. S. McDowell* for defendant. Complaint satisfied. Dismissed, April 7, 1919.

10075. *NEW PRAGUE MILLING Co. et al. v. G. L. T. C. et al.* Proportional or reshipping rates via Chicago, Ill., and Milwaukee, Wis., rail lake and rail. *F. J. Morley* for complainants. *H. W. Bickel, G. S. Patterson, W. L. Cairns, A. H. Lossow, F. M. Miner, M. M. Joyce, Winston, Strawn & Shaw, Glennon, Cary & Walker, R. H. Widdecombe, S. S. Perry, J. B. Sheean, R. W. Moore, W. J. Mullin, O. W. Dynes, T. H. Burgess, M. B. Pierce, W. L. Kinter, A. P. Humburg, W. C. Snyder, J. Stilwell, L. Mayer, C. Brown, J. L. Seager, K. F. Burgess, and W. F. Dickinson* for defendants. Dismissed on request of complainants, February 4, 1919.

10076. *RICHMOND LUMBER Co. et al. v. A. C. L. R. R. Co. et al.* Rates on lumber from points in North Carolina and South Carolina to South Richmond, Va. *W. J. Strobel* for complainants. *R. W. Moore* for defendants. Dismissed on request of complainants, January 7, 1919.

10118. *L. & N. COAL OPERATORS' ASSOCIATION v. L. & N. R. R. Co. et al.* Combination rates on coal from mines in the Belleville and Equality or Eldorado Groups to interstate destinations. *R. W. Ropiequet* for complainant. *W. A. Northcutt* for defendants. Dismissed on motion of complainant, April 7, 1919.

10159. *NATCHEZ CHAMBER OF COMMERCE et al. v. Y. & M. V. R. R. Co. et al.* Combination rates on apples from points in Arkansas and Missouri to Natchez, Miss. *B. F. Martin* for complainants. *H. G. Herbel, C. C. P. Rausch, and G. H. Hamilton* for defendants. Dismissed on request of complainant, January 7, 1919.

10177. *PARADISE COAL Co. v. I. C. R. R. Co. et al.* Rules and regulations of defendants governing the distribution of coal cars to local and junction point mines and failure of the Illinois Central to supply complainant's Paradise Mine, located at Duquoin, Ill., its fair proportion of available equipment. *R. W. Ropiequet* for complainant. *R. V. Fletcher* for defendants. Dismissed on request of complainant, February 4, 1919.

10215. *SOUTHEASTERN REFRIGERATION CHARGES.* Application for increased refrigeration rates or charges on berries, melons, domestic fruits, and vegetables from points of origin south of the Ohio and Potomac rivers and east of the Mississippi to all points in the United States and Canada. *R. Clifton* for petitioner. Application withdrawn. Proceeding discontinued, February 4, 1919.

10226. *MICHIGAN RAILWAY COMPANY RATES.* Investigation instituted by the Commission on its own motion into and concerning the rules, regulations, practices, etc., of the Michigan Ry. Co., and other rates. *L. W. Carr* for state of Michigan. *S. W. Ladd, J. R. Whiting, J. Kirwin, S. L. Vaughan, J. H. Pound, H. Meyering, J. S. Moore, and W. S. Rodger* for respondents. Good cause appearing therefor, proceeding discontinued, March 31, 1919.

10253. *MUSICK v. N. & W. Ry. Co. et al.* Refusal to furnish cars for the loading of lumber to complainant's Old Red Jacket siding or spur, in Mingo county, West Va. *B. R. Bias* for complainant. *R. W. Moore* for Director General of Railroads. Dismissed for lack of prosecution, April 7, 1919.

10277. *NEW PROCESS STOVE Co. v. N. Y., C. & St. L. R. R. Co. et al.* Car service charges accruing at points en route on crating lumber from Eau Claire and Washburn, Wis., to Cleveland, Ohio. *J. D. Barkley* for complainant. *H. T. Ballard* for defendants. Dismissed on request of complainant, March 3, 1919.

10307. *AETNA EXPLOSIVES Co. (INC.) v. McADOO AND C. & N. W. Ry. Co.* Storage charges on sulphuric acid, in privately owned tank cars, placed on complainant's private tracks at Ishpeming, Mich. *E. E. Miller* for complainant. No appearance for defendants. Complaint satisfied. Dismissed, March 3, 1919.

10332. *LIBBY LUMBER Co. v. McADOO, G. N. Ry. Co. et al.* Rates on lumber from Libby, Idaho, to points in Nebraska on the line of the Union Pacific R. R. Co. *D. D. Conn* for complainant. *R. W. Moore* for Director General of Railroads. Complaint satisfied. Dismissed, April 7, 1919.

*Johnson, H. H. Johnson, H. D. Palmer, R. W. Moore, and C. E. Dewey* for Dismissed on request of complainant, March 3, 1919.

9578. *AMERICAN CARBOLITE SALES Co. v. N. P. Ry. Co. et al.* *P. calcium from Duluth, Minn., to Grand Rapids, Mich. J. S. St. A. H. Lossow, D. F. Lyon, and J. C. Bills* for defendants. Dis- ecution, April 7, 1919.

9677. *EWAUNA Box Co. v. S. P. Co.* Rate on box Oreg., to certain points in the state of California. *F. H. Wood, C. W. Durbrow, G. D. Squires, and F. F. F.* dismissed on request of complainant, February 4, 1919.

9687. *COLUMBIA COTTON OIL Co. v. L. & N. W seed from Magnolia, Ark., and other points on th R. R. Co., to Shreveport and Monroe, La. C. for complainant. S. S. Senne, E. Moulton, defendants.* Dismissed on request of com-

9708. *ROYSTER GUANO Co. v. S. Ry Norfolk, Va., to points in the state of N R. W. Moore and A. M. Bull* for dele March 3, 1919.

9710. *INTERNATIONAL PAPER C board, L. C. I., from Bellows Fal plainant. W. A. Cole and S. plainant, February 4, 1919.*

9716. *DUPONT WHOLESA commodity rates from St for complainant. C. P. March 3, 1919.*

9757. *ASSOCIATE L. I. M. & S. Ry. Co. and commodity r (Inc.) v. A., T. & S. F. Ry. Co. F. P. Gregson R. K. Minson, S. F. Ry. Co. ants. Dismissed. Lumber Co. (Inc.) v. Jobbers of Los Angeles v. A., T. & S. F. Ry. Co.*

9804. *H of defend*

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*Swift Motor Co. v. P. & R. Ry. Co.*

*South Terminal R. R. Co. v. N. Y. C. R. R. Co.*

*Canadian P. Ry. Co., Schaefer & Son v.*

*Canyon Lumber Co. v. G. N. Ry. Co.*

*Central R. R. of N. J., Aetna Explosives Co. v.*

*Chamber of Commerce, Natchez, Miss. v. Y. & M. V. R. R. Co.*

*Chicago, R. I. & P. Ry. Co., James Black Dry Goods Co. v.*

*City of Springfield, Tenn. v. L. & N. R. Co.*

*Columbia Cotton Oil Co. v. L. & N. W. R. R. Co.*

*Consolidation Coal Co. v. B. & O. R. R. Co.*

*Cudahy Packing Co. v. D., L. & W. R. R. Co.*

*Delaware, L. & W. R. R. Co., Cudahy Packing Co. v.*

744

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745

745

745

745

745

745

745

745

745

745

745

745

	Page.
I. R. R. Co., Jackson Iron & Steel Co. v.....	744
le Grocery Co. v. A. G. S. R. R. Co.....	744
A., T. & S. F. Ry. Co.....	742
a. P. Co.....	744
Passenger Service, In re Issuance and Use of.....	741
ases and Franks, In re Issuance and Use of.....	741
.....	742
illing Co. v.....	745
.....	743
.....	742
& St. L. R. R. Co.....	744
.....	745
ve Passenger Service.....	741
.....	741
.....	744
.....	744
.....	741
.....	742
..... R. R. Co.....	745
..... G. N. Ry. Co.....	745
..... St. L. & S. F. R. R. Co.....	743
..... Co., Columbia Cotton Oil Co. v.....	744
..... R. R. Co.:.....	
..... Springfield, Tenn. v.....	742
..... alico Grocery Co. v.....	742
L. & N. Coal Operators' Asso. v.....	745
Mount Pleasant Fertilizer Co. v.....	742
McAdoo and:	
Baltimore & O. R. R. Co., Merchants & Manufacturers Asso. of Baltimore v.....	746
Chicago & N. W. Ry. Co., Aetna Explosives Co. (Inc.) v.....	745
Great N. Ry. Co., Libby Lumber Co. v.....	745
Pandhandle & S. F. R. R. Co., Royal Brewing Co. v.....	746
Merchants & Manufacturers Asso. of Baltimore v. McAdoo and Baltimore & O.	
R. R. Co.....	746
Michigan Railway Company Rates.....	745
Monongahela Ry. Co., North American coal Co. v.....	743
Mount Pleasant Fertilizer Co. v. L. & N. R. R. Co.....	742
Musick v. N. & W. Ry. Co.....	745
Natchez Chamber of Commerce v. Y. & M. V. R. R. Co.....	745
National Live Stock Exchange v. A. & R. R. R. Co.....	743
New Prague Milling Co. v. G. L. T. C.....	745
New Process Stove Co. v. N. Y., C. & St. L. R. R. Co.....	745
New York, C. & St. L. R. R. Co., New Process Stove Co. v.....	745
New York C. R. R. Co., Bush Terminal R. R. Co. v.....	742
New York, N. H. & H. R. R. Co., Providence Board of Trade v.....	741
Norfolk & W. Ry. Co.:.....	
Belton Mills v.....	741
Musick v.....	745
North American Coal Co. v. M. Ry. Co.....	743
Northern P. Ry. Co., American Carbolite Sales Co. v.....	744
52 I. C. C.	



10336. *SHELVIN-HIXON Co. v. O. T. Ry. Co. et al.* Rules and regulations governing minimum weights on lumber and products from Bend, Oreg., to destinations east of the Rocky Mountains, including points in western trunk line, transcontinental and eastern trunk line territories. *D. D. Conn* for complainant. *R. W. Moore* for Director General of Railroads. Complaint satisfied. Dismissed, April 7, 1919.

10352. *MERCHANTS & MANUFACTURERS ASSOCIATION OF BALTIMORE v. McADOO. B. & O. R. R. Co. et al.* Reduction in free time for removal of inbound freight at Baltimore, Md., and Philadelphia, Pa. *A. E. Beck* for complainant. *R. W. Moore* for Director General of Railroads. Complaint satisfied. Dismissed, March 3, 1919.

10362. *ROYAL BREWING Co. v. McADOO, P. & S. F. R. R. Co. et al.* Rate and minimum weight on returned empty beer packages from Clovis, New Mex., to Weston Mo. *T. J. Murphy* for complainant. No appearances for defendants. Good cause appearing therefor, complaint dismissed, March 31, 1919.

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**TABLE OF CASES DISPOSED OF WITHOUT PRINTED REPORT.**

	Page
Aberdeen & R. R. Co., National Live Stock Exchange v.....	743
Aetna Explosives Co. (Inc.) v.:	
Central R. R. Co. of N. J.....	744
McAdoo and C. & N. W. Ry. Co.....	745
Alabama G. S. R. R. Co.:	
Dupont Wholesale Grocery Co. v.....	744
Walsh & Weidner Boiler Co. v.....	742
American Carbolite Sales Co. v. N. P. Ry. Co.....	744
American Maize-Products Co. v. B. & A. R. R. Co.....	743
Anderson-Tully Co. v. St. L., I. M. & S. Ry. Co.....	742
Arkansas Lumber Co. (Inc.) v. A., T. & S. F. Ry. Co.....	744
Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co.....	744
Atchison, T. & S. F. Ry. Co.:	
Arkansas Lumber Co. (Inc.) v.....	744
Associated Jobbers of Los Angeles v.....	744
Eads Water Co. v.....	742
Atlanta Freight Bureau v. S. Ry. Co.....	743
Atlantic C. L. R. R. Co., Richmond Lumber Co. v.....	745
Baltimore & O. R. R. Co., Consolidation Coal Co. v.....	741
Belton Mills v. N. & W. Ry. Co.....	741
Board of Trade, Providence, R. I. v. N. Y., N. H. & H. R. R. Co.....	741
Boston & A. R. R. Co., American Maize-Products Co. v.....	743
Boston & M. R. R., International Paper Co. v.....	744
Buick Motor Co. v. P. & R. Ry. Co.....	742
Bush Terminal R. R. Co. v. N. Y. C. R. R. Co.....	742
Canadian P. Ry. Co., Schaefer & Son v.....	742
Canyon Lumber Co. v. G. N. Ry. Co.....	743
Central R. R. of N. J., Aetna Explosives Co. v.....	744
Chamber of Commerce, Natchez, Miss. v. Y. & M. V. R. R. Co.....	745
Chicago, R. I. & P. Ry. Co., James Black Dry Goods Co. v.....	741
City of Springfield, Tenn. v. L. & N. R. R. Co.....	742
Columbia Cotton Oil Co. v. L. & N. W. R. R. Co.....	744
Consolidation Coal Co. v. B. & O. R. R. Co.....	741
Cudahy Packing Co. v. D., L. & W. R. R. Co.....	743
Delaware, L. & W. R. R. Co., Cudahy Packing Co. v.....	743

	Page.
Detroit, T. & I. R. R. Co., Jackson Iron & Steel Co. v.....	744
DuPont Wholesale Grocery Co. v. A. G. S. R. R. Co.....	744
Eads Water Co. v. A., T. & S. F. Ry. Co.....	742
Ewauna Box Co. v. S. P. Co.....	744
Franks, Passes and Free Passenger Service, In re Issuance and Use of.....	741
Free Passenger Service, Passes and Franks, In re Issuance and Use of.....	741
Good v. G. N. Ry. Co.....	742
Great L. T. C., New Prague Milling Co. v.....	745
Great N. Ry. Co.:	
Canyon Lumber Co. v.....	743
Good v.....	742
Hall-Zimmerman Coal Co. v. P., C., C. & St. L. R. R. Co.....	744
Illinois C. R. R. Co., Paradise Coal Co. v.....	745
In re:	
Issuance and Use of Passes, Franks and Free Passenger Service.....	741
Pipe Lines.....	741
International Paper Co. v. B. & M. R. R.....	744
Jackson Iron & Steel Co. v. D., T. & I. R. R. Co.....	744
James Black Dry Goods Co. v. C., R. I. & P. Ry. Co.....	741
Jellico Grocery Co. v. L. & N. R. R. Co.....	742
L. & N. Coal Operators' Asso. v. L. & N. R. R. Co.....	745
Libby Lumber Co. v. McAdoo and G. N. Ry. Co.....	745
Liberal Coal & Mining Co. v. St. L. & S. F. R. R. Co.....	743
Louisiana & N. W. R. R. Co., Columbia Cotton Oil Co. v.....	744
Louisville & N. R. R. Co.:	
City of Springfield, Tenn. v.....	742
Jellico Grocery Co. v.....	742
L. & N. Coal Operators' Asso. v.....	745
Mount Pleasant Fertilizer Co. v.....	742
McAdoo and:	
Baltimore & O. R. R. Co., Merchants & Manufacturers Asso. of Baltimore v.....	746
Chicago & N. W. Ry. Co., Aetna Explosives Co. (Inc.) v.....	745
Great N. Ry. Co., Libby Lumber Co. v.....	745
Pandhandle & S. F. R. R. Co., Royal Brewing Co. v.....	746
Merchants & Manufacturers Asso. of Baltimore v. McAdoo and Baltimore & O. R. R. Co.....	746
Michigan Railway Company Rates.....	745
Monongahela Ry. Co., North American coal Co. v.....	743
Mount Pleasant Fertilizer Co. v. L. & N. R. R. Co.....	742
Musick v. N. & W. Ry. Co.....	745
Natchez Chamber of Commerce v. Y. & M. V. R. R. Co.....	745
National Live Stock Exchange v. A. & R. R. R. Co.....	743
New Prague Milling Co. v. G. L. T. C.....	745
New Process Stove Co. v. N. Y., C. & St. L. R. R. Co.....	745
New York, C. & St. L. R. R. Co., New Process Stove Co. v.....	745
New York C. R. R. Co., Bush Terminal R. R. Co. v.....	742
New York, N. H. & H. R. R. Co., Providence Board of Trade v.....	741
Norfolk & W. Ry. Co.:	
Belton Mills v.....	741
Musick v.....	745
North American Coal Co. v. M. Ry. Co.....	743
Northern P. Ry. Co., American Carbolite Sales Co. v.....	744
52 I. C. C.	

	Page.
Oregon T. Ry. Co., Shelvin-Hixon Co. <i>v.</i> .....	746
Paradise Coal Co. <i>v.</i> I. C. R. R. Co.....	745
Passes, Franks and Free Passenger Service, In re Issuance and Use of.....	741
Philadelphia & R. Ry. Co., Buick Motor Co. <i>v.</i> .....	742
Pipe Lines, In the Matter of.....	741
Pittsburgh, C., C. & St. L. R. R. Co., Hall-Zimmerman Coal Co. <i>v.</i> .....	744
Providence Board of Trade <i>v.</i> N. Y., N. H. & H. R. R. Co.....	741
Refrigeration Charges, Southeastern.....	745
Richmond Lumber Co. <i>v.</i> A. C. L. R. R. Co.....	745
Royal Brewing Co. <i>v.</i> McAdoo and Panhandle & S. F. R. R. Co.....	746
Royster Guano Co. <i>v.</i> S. Ry. Co.....	744
St. Louis & S. F. R. R. Co., Liberal Coal & Mining Co. <i>v.</i> .....	743
St. Louis, I. M. & S. Ry. Co., Anderson-Tully Co. <i>v.</i> .....	742
Scattergood & Co. <i>v.</i> W. R. R. Co.....	742
Schaefer & Son <i>v.</i> C. P. Ry. Co.....	742
Shelvin-Hixon Co. <i>v.</i> O. T. Ry. Co.....	746
Southeastern Refrigeration Charges.....	745
Southern P. Co.:	
Ewauna Box Co. <i>v.</i> .....	744
Swift & Co. <i>v.</i> .....	741
Southern Ry. Co.:	
Atlanta Freight Bureau <i>v.</i> .....	743
Royster Guano Co. <i>v.</i> .....	744
Swift & Co. <i>v.</i> S. P. Co.....	741
Wabash R. R. Co., Scattergood & Co. <i>v.</i> .....	742
Walsh & Weidner Boiler Co. <i>v.</i> A. G. S. R. R. Co.....	742
Yazoo & M. V. R. R. Co., Natchez Chamber of Commerce <i>v.</i> .....	745

## REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING THE TIME COVERED BY THIS VOLUME.

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8766. *WESTPORT STONE Co. v. C., C. & St. L. Ry. Co.* January 7, 1919. Reparation for \$632, on account of damages due to defendants' refusal to allow complainants \$1 per car for switching interstate shipments of stone from the latter's quarries at Westport and Newport, Ind.

9057. *BLACKMER & POST PIPE Co. v. M. P. Ry. Co.* January 7, 1919. Reparation for \$331, on account of unreasonable charges for reweighing shipments of coal on scales on complainant's private switch at St. Louis, Mo.

9460. *CALIF. PINE BOX & LUMBER Co. v. S. P. Co.* January 7, 1919. Reparation for \$25,485.53, on shipments of box shooks from points in Oregon to points in California on account of unreasonable charges.

7459. *STIMSON HARDWOOD Co. v. C., R. I. & P. Ry. Co.* February 4, 1919. Reparation for \$1,050.95, on shipments of hardwood logs from Proctor, Edmondson, and Hobart, Ark., to Memphis, Tenn., on account of unreasonable rates.

8586. *GULF REFINING Co. of LA. v. L. & N. R. R. Co.* February 4, 1919. Reparation for \$2,828.23, on account of unreasonable rates on shipments of gasoline from Mobile, Ala., to Chattanooga and Knoxville, Tenn., and on shipments of kerosene, naphtha, gasoline, and lubricating oil from Gretna, La. to Gadsden and Mobile, Ala., and Knoxville, Tenn.

9251. *FRUIT DISPATCH Co. v. P. & R. Ry. Co.* February 4, 1919. Reparation for \$38.40, on account of defendant's failure to install door boards for protection of shipments of imported bananas from Philadelphia, Pa., to various destinations.

9361. *FRUIT DISPATCH Co. v. P. R. R. Co.* February 4, 1919. Reparation for \$295.70, on account of defendants' failure to install door boards for protection of shipments of imported bananas from Baltimore, Md., Philadelphia, Pa., and New York, N. Y., to various destinations.

9386. *TUNIS-COCKEY LUMBER Co. v. L. O., P. & G. R. R. Co.* February 4, 1919. Reparation for \$34.62, on shipments of lumber from Springdale, Fla., to Wilkinsburg, Pa., on account of unreasonable rate.

9474. *HERRMANN & Co. v. N. Y., N. H. & H. R. R. Co.* February 4, 1919. Reparation for \$129.87, on shipments of spent iron mass from Cambridge, Mass., to Elizabethport, N. J., on account of unreasonable rate.

9529 (Sub-No. 1). *CALIF. FRUIT EXCH. v. S. P. Co.* February 11, 1919. Reparation for \$2,239.31, on shipments of box shooks from Klamath Falls, Oreg., to various points in California, on account of unreasonable rates.

8793. *WEST COAST LUMBERMEN'S ASSO. v. A. & W. Ry. Co.* March 3, 1919. Reparation for \$496.47, on shipments of cedar shingles from points in Washington and Oregon to various destinations on account of unreasonable rates.

9268. *ASH PRODUCTS Co. v. V. R. R. Co.* March 3, 1919. Reparation for \$40.04, on shipments of tent pins from Terre Haute, Ind., to St. Louis, Mo., on account of unreasonable rate.

52 I. C. C.

9458. GULFPORT FERTILIZER Co. v. L. & N. R. R. Co. March 3, 1919. Reparation for \$539.68, on shipments of imported pyrites ore from Pensacola, Fla., to Gulfport, Miss., on account of unreasonable charges.

9522. RIECK Co. v. B. & O. R. R. Co. March 3, 1919. Reparation for \$871.31, on l. c. l. shipments of bottled milk, iced, in cases, from Ravenna, Ohio, to Pittsburgh, Pa., on account of unreasonable rates.

9601. ANSTED & BURK Co. v. C., C. & St. L. Ry. Co. March 3, 1919. Reparation for \$4,255.08, on shipments of wheat from various states to Springfield, Ohio, there stored and reshipped to New York for export, on account of unreasonable rates.

9673. WILSON & Co. v. C., C. & St. L. Ry. Co. March 3, 1919. Reparation for \$292.20, on shipments of meat in peddler cars from Chicago, Ill., to Muncie and New Castle, Ind., and Middletown, Ohio, on account of unreasonable charges.

9384. PROVIDENCE FRUIT & PRODUCE EXCH. v. AMERICAN EXPRESS Co. March 3, 1919. Reparation for \$420.62, on shipments of strawberries from Independence, La., and Jackson, Miss., to Providence, R. I., on account of unreasonable express rates.

9712. TOURTELLOT v. AMERICAN EXPRESS Co. March 3, 1919. Reparation for \$83.90, on shipment of strawberries from Ripley, Tenn., to Providence, R. I., on account of unreasonable rate.

9793. AETNA EXPLOSIVES Co. v. S. Ry. Co. March 3, 1919. Reparation for \$854.15, on shipments of sulphuric acid in tank cars from Hampton, Ga., to Greensboro, N. C., on account of unreasonable rate.

6412. NEBRASKA BRIDGE SUPPLY & LUMBER Co. v. A. G. S. R. R. Co. April 7, 1919. Reparation for \$243.01, on shipments of cedar fence posts from Chickamauga, Ga., to destinations in Nebraska, Missouri, and Iowa, on account of unreasonable rates.

7789. STEPHENS-ADAMSON MFG. Co. v. A. G. S. R. R. Co. April 7, 1919. Reparation for \$35.01, on shipments of pig iron from Oxmoor, Ala., to Batavia, Ill., on account of unreasonable rate.

9529. EWAUNA BOX Co. v. S. P. Co. April 7, 1919. Reparation for \$1,423.36, on shipments of box shooks and box material from Southern Oregon mills to points in California, on account of unreasonable rates.

9550. ALA. PACKING Co. v. A. G. S. R. R. Co. April 7, 1919. Reparation for \$246, on shipments of hogs and cattle from New Orleans, La., to Birmingham, Ala., on account of unreasonable rates.

9697. OTTAWA COAL & SUPPLY Co. v. D., T. & I. R. R. Co. April 7, 1919. Reparation for \$252.74, on shipments of coal from points in Kentucky to complainant's yards at Ottawa, Ohio, on account of unreasonable rates.

NOTE.—The amount of reparation awarded in the above cases aggregates \$43,119.18.

52 I. C. C.

## TABLE OF COMMODITIES.

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[The number in parentheses following citation indicates where commodity is considered.]

- ACID, NITRATING.** Louviers, Colo., to Hopewell, Va., 427.
- ACID, SULPHURIC:**  
     Copperhill, Tenn., from Mississippi, Alabama, and Georgia, 423.  
     New Orleans, La., to Oakdale, Pa., 505.
- ALBUMEN, DRIED EGG.** Tacoma, Wash., to Chicago, Ill., originating in China, 361.
- APPLES:**  
     Jersey City, N. J. Demurrage charges, 304.  
     Kansas to Oklahoma and Texas, 198.
- ASBESTOS.** Central freight association territory to and from trunk line and New England territories, 84.
- AUTOMOBILES.** Eastern defined territories to Utah common points, 507.
- AXLES, VEHICLE.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).
- BARB.** New Madrid, Mo., to Madison, Ill., 325.
- BARB, ANGLE.** Jersey City, N. J., to Louin, Miss., 363.
- BASES, SHELVING.** Official classification territory. Ratings, 3.
- BASES, WALL-CASE.** Official classification territory. Ratings, 3.
- BELTING, COTTON.** Official, southern and western classification territories. Ratings, 15.
- BERRIES.** Washington, Oregon, and Idaho to various destinations, 266.
- BLOCKS, GRANITE PAVING.** Red Granite, Wis., to Kansas City, Mo., 330.
- BOARD, PAPER.** Central freight association territory to and from trunk line and New England territories, 84.
- BOARD, WALL.** Central freight association territory to and from trunk line and New England territories, 84.
- BOLTS, VEHICLE.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).
- BOTTLES, EMPTY BEER.** Clifton, Ariz., to St. Louis, Mo., 555.
- BOTTLES, GLASS.** Poteau, Okla., to Dallas, Tex., 10.
- BRAID, FLAT WIRE.** San Diego, Calif., from Niles, Mich., and Weehawken, N. J., 499.
- BRAN, COTTONSEED-HULL.** East St. Louis, Ill., to Kansas City, Mo., 353.
- BRICK.** Chattanooga, Tenn., to Fort Payne, Ala., 337.
- BUCKRAMS.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).
- CANNED GOODS.** Mobridge, S. Dak., from Chicago, and Rock Island, Ill., and Duluth and St. Paul, Minn., 307.
- CARRIAGE DASHES.** See Dashes, Carriage.
- CARS, NEW EMPTY TANK:**  
     Milton, Pa., and North St. Louis, Mo., to Chanute, Kans., and Cushing, Okla., 593.  
     Milton and Sharon, Pa., and Warren, Ohio, to the southeast, 235.
- 52 I. C. C.

**CASTINGS, MALLEABLE IRON.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).

**CATTLE.** Texas to Natchez, Miss., 558 (570).

**CEMENT.** Western trunk line territory to and from adjacent territories, 225.

**CEMENT, PORTLAND:**

Pennsylvania to New Jersey, New York, New England, Pennsylvania, Maryland, Delaware, Ohio, and southern states, 387.

Richard City, Tenn., to Jennings, La., 517.

**CHERRIES.** Washington, Oregon, and Idaho to various destinations, 266.

**CLASS RATES:**

Colorado common points to and from Chicago, Ill., Mississippi and Missouri rivers, Kansas, Nebraska, Texas, New Mexico, Arizona, South Dakota, and Wyoming, 439.

Natchez, Miss., to and from Texas, 558.

**CLASS AND COMMODITY RATES:**

Atlantic seaboard territory to Colorado common points, via Galveston, Tex., 439.

Natchez, Miss., to and from Louisiana and Arkansas, 105.

St. Louis, Mo., to Coffeyville and Independence, Kans., 497.

**CLAY, CRUDE.** Buffalo Gap, S. Dak., to Des Moines, Iowa, 548.

**CLOTH, CARRIAGE.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).

**COAL:**

Cortex No. 2 mine, Pa., to Barnegat, N. J., thence forwarded to Tuckerton, N. J., 319.

Lake Erie ports, for transshipment. Demurrage rules, 181.

**COAL, ANTHRACITE.** Wyoming, Lehigh, and Schuylkill regions, Pa., to New York, New Jersey, and Pennsylvania, 62.

**COAL, BITUMINOUS:**

Elizabethport, N. J. Demurrage charges, 344.

Kentucky mines to Ohio, Indiana, and Michigan, 187.

Niles Center, Ill., from Pennsylvania, West Virginia, Kentucky, Ohio, Indiana, and Illinois, 339.

**COAL, BITUMINOUS NUT.** Rapson, Colo., to Protection, Kans., and Norman, Avard, and New Burlington, Okla., 164.

**COAL, SEMIANTHRACITE.** Hackett, Ark., to Cedar Rapids, Nebr., 379.

**COMMODITY RATES.** Denver, Colo., to western destinations, 439.

**COMPANY MATERIAL.** Barnegat, N. J., to Tuckerton, N. J., 319.

**CONCRETE MIXERS.** See Mixers, Concrete.

**COTTON.** Louisiana to New Orleans, La., for export and interstate movement, 527.

**COTTON, COMPRESSED.** New Orleans, La., to Seattle, Wash., for export to Vladivostok, Siberia, 323.

**COTTON PIECE GOODS.** Little Rock, Ark., from Massachusetts, Maine, New Hampshire, Rhode Island, New York, New Jersey, and Pennsylvania, 18.

**COTTON SEED.** Shreveport, La., to Vicksburg, Miss., 148.

**COUNTERS.** Official classification territory. Ratings, 3.

**CROSSTIES.** Louisiana, Arkansas, Kansas, Oklahoma, Texas, Missouri, and Mississippi to Missouri, Illinois, Tennessee, Arkansas, Louisiana, and Wisconsin, 73.

**DASHES, CARRIAGE.** Rock Hill, S. C., from Buffalo, N. Y., 583 (590).

**DYNAMITE.** South Amboy, N. J., for Sinnemahoning and Emporium, Pa. Dunage, 173.

**EGGS.** Rules and regulations regarding the transportation, 47.

**ENGINES, LOGGING.** Portland, Ore., to Vancouver, British Columbia, 167.

**EXPLOSIVES, HIGH:**

Fayville, Ill., to Atlanta, Mich., 26.

Fayville, Ill., to Illinois, Michigan, and Indiana, 393.

**FASTENINGS.** New Madrid, Mo., to Madison, Ill., 325.

**FIFTH WHEELS.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584, 592).

**FISH.** Washington and Oregon to various destinations, 266.

**FLOUR:**

Great Falls, Mont., to St. Paul and Minneapolis, Minn., and Seattle and Tacoma, Wash., 151.

Nashville, Tenn., from Portland, Corvallis, and Silverton, Oreg., 491.

Philadelphia, Pa., from western states, 403.

**FOREST PRODUCTS:**

Laona and other Wisconsin points to points on M., St. P. & S. S. M. Ry. Co. Divisions, 7.

Washington Western Railway points to interstate destinations, 42.

**FORGINGS, VEHICLE.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, 583 (584).

**FRUITS, CITRUS.** Florida to Tennessee, 481.

**FRUITS, DRIED.** California to Boise, Idaho, via Ogden, Utah, 375.

**FRUITS, FRESH.** Washington, Oregon, and Idaho to various destinations, 266.

**GASOLINE.** Oklahoma to St. Louis, Mo., via Coffeyville, Kans., 281.

**GLASS, WINDOW.** Kansas to Houston, Tex., 380.

**GLASSES, JELLY.** Sand Springs, Okla., to Pacific coast territory, 287.

**GLOBES, LAMP.** Official classification territory. Ratings, 413.

**GLUCOSE.** Mobridge, S. Dak., from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., 307.

**Grain.** Carolina territory from c. f. a. territory, Pennsylvania, Maryland, West Virginia, and Virginia, milled at Virginia points, 63.

**GRAIN, BREWERS' WET.** New Jersey from New York and Brooklyn, N. Y., Jersey City and Newark, N. J., and Philadelphia, Pa., 317.

**GROCERIES, WHOLESALE:**

Mobridge, S. Dak., from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., 307.

Mobridge, S. Dak., to North Dakota and Montana, 307.

**HARDWARE.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).

**HAY:**

Breckenridge, Mich., to Charleston, S. C., 331.

Kansas City, Mo., from Kansas, Nebraska, Wyoming, South Dakota, Montana, and Colorado, reconsigned to Chicago, Peoria, and East St. Louis, Ill., Keokuk, Iowa, St. Louis, Mo., St. Paul, Minneapolis, and Duluth, Minn., and Ashland, Wis., 408

**HEADING.** New Orleans, La., to Texas, 488.

**Hogs.** Texas to Natchez, Miss., 558 (570).

**HOOPS.** New Orleans, La., to Texas, 488.

**HOPS.** California to various destinations, 356.

**HORSES:**

Pittsburgh, Pa., to Jersey City, N. J., 552.

Texas to Natchez, Miss., 558 (570).

**IRON.** Laredo to San Antonio, Tex., originating at Monterey, Mexico, 521.

**IRON ARTICLES.** Laredo to San Antonio, Tex., originating at Monterey, Mexico, 521.

**IRON, BAR.** Rock Hill, S. C., from Pittsburgh, Pa., 583 (590).



**IRON, FIG:**

Hoboken, N. J. Storage charges, 397.

Southern blast furnaces to Ohio River crossings, c. f. a., trunk line, and New England territories, 576.

**IRON, SCRAP.** Houston, Tex., to Richmond, Va., 22.

**IRON, SPECIAL.** Rock Hill, S. C., from Cincinnati and Cleveland, Ohio, 583 (589).

**JARS, GLASS FRUIT.** Sand Springs, Okla., to Pacific coast territory, 287.

**JOINTS, EXPANSION PAVING.** See **PAVING JOINTS, EXPANSION.**

**JOINTS, VEHICLE.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).

**KEGS, EMPTY BEER.** Clifton, Ariz., to St. Louis, Mo., 555.

**LAMPS.** Official classification territory. Ratings, 413.

**LEATHER.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).

**LIVE STOCK.** Chicago stockyards, Ill. Loading and unloading charges, 209.

**LOGS, HARDWOOD.** Grangeville Junction, La., to Memphis, Tenn., via Natalbany, La. Divisions, 429.

**LUMBER:**

Buffalo, East Buffalo, Black Rock, or North Tonawanda, N. Y. Transit arrangements on shipments originating south of the Ohio and west of the Mississippi, 31.

Classification and rates, 598.

Costello, Pa., to Curriers, N. Y., 329.

Gable, S. C., to East Norwood, Ohio, via Potomac Yard, Va., 541.

Kansas City, Mo., to Des Moines, Iowa., 370.

Laona and other Wisconsin points to points on M., St. P. & S. S. M. Ry. Co. Divisions, 7.

Laquin, Pa., to Springfield, N. J., 21.

Miley, S. C., to Norfolk, Va., and North Philadelphia and Chester, Pa., 545.

New Orleans, La., to Texas, 488.

North Carolina and South Carolina to New York, New Jersey, and Pennsylvania, 28.

Patton Switch, Sunlight, and Ford Switch, Ala., to interstate destinations, 159.

Washington Western Railway points to interstate points, 42.

Westville, S. C., to Bath Beach, N. Y., 493.

**LUMBER ARTICLES:**

Kansas City, Mo., to Des Moines, Iowa, 370.

New Orleans, La., to Texas, 488.

**LUMBER, BOX.** New Orleans, La., to Texas, 488.

**LUMBER, OAK.** Homer, La., to New York, N. Y., 327.

**LUMBER, YELLOW-PINE.** Spring Hill, La., to Johnstown, Pa., 486.

**LUMBER PRODUCTS.** Classification and rates, 598.

**MEAL, COTTONSEED FEED.** Birmingham, Ala., to Nashville, Tenn., 580.

**MEATS, FRESH.** Allowances for use of refrigerator cars, 240.

**MILK:**

Boston, Mass., from Vergennes and Brandon, Vt., 269.

Mobridge, S. Dak., from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., 307.

**MIXERS, CONCRETE.** Waterloo, Iowa, to Tacoma, Wash., 351.

**MULES.** Texas to Natchez, Miss., 558 (570).

**NITRATE OF SODA.** See **SODA, NITRATE OF.**

**NUTS, IRON OR STEEL.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).

**OIL, CRUDE.** Miami, W. Va., to Toledo, Ohio, 12.

**ONIONS.** Oregon, California, and Nevada to California, Arizona, New Mexico, Colorado, Texas, Kansas, Oklahoma, Missouri, and Illinois. Dunnage, 334.

- ORE, IRON. Barkwood, Ga., to Middlesborough, Ky., 519.
- PACKAGES, EMPTY BEER. Clifton, Ariz., to St. Louis, Mo., 555.
- PACKING-HOUSE PRODUCTS. Allowances for use of refrigerator cars, 240.
- PAPER. Mobridge, S. Dak., from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., 307.
- PAPER, BUILDING. Central freight association territory to and from trunk line and New England territories, 84.
- PAPER, NEWSPRINT:  
Niagara Falls, N. Y., to Little Rock and Fort Smith, Ark., 514.  
San Francisco, Calif., to Dallas, Tex., 39.
- PAPER, ROOFING. Central freight association territory to and from trunk line and New England territories, 84.
- PAVING JOINTS, EXPANSION. Lockland, Ohio, to Everett and Tacoma, Wash., and San Francisco, Los Angeles, and San Bernardino, Calif., 484.
- PEACHES. California to Boise, Idaho, via Ogden, Utah, 375.
- PETROLATUM, LIQUID. Richmond, Calif., to Portland, Oreg., and other points, 525.
- PHOSPHATE, ACID. Carteret, N. J., to Philadelphia, Pa., 550.
- PICKLES. Mobridge, S. Dak., from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., 307.
- PLASTER. Gypsum, Utah, to California, 433.
- PLASTER, CEMENT:  
Natchez, Miss., from Acme and Plasterco, Tex., 558 (571).  
Plasterco, Tex., to Missouri, Kansas, Oklahoma, Arkansas, Louisiana, Mississippi, Alabama, Colorado, New Mexico, Iowa, and Illinois, 293.
- POLES, VEHICLE. Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).
- POSTS, CEDAR. Spur 325, Minn., to Morrison, Ill., via Minnesota Transfer, Minn., 495.
- POTATOES:  
Duluth to Minneapolis, Minn., reshipped to Centralia, Ill., 523.  
Oregon, California, and Nevada to California, Arizona, New Mexico, Colorado, Texas, Kansas, Oklahoma, Missouri, and Illinois. Dunnage allowances, 334.
- PROPS, MINE. Shenandoah, Pa., from Delaware, Maryland, and Virginia, 249.
- PULP, DRIED BEET. Wallaceburg, Ontario, to New York and New Jersey, 145.
- RAILS, OLD:  
Jersey City, N. J., to Louin, Miss., 363.  
New Madrid, Mo., to Madison, Ill., 325.
- RAILS, SCRAP. Houston, Tex., to Richmond, Va., 22.
- RAILS, SCRAP STEEL. New Orleans, La., to Huntington, W. Va., 419.
- RAILS, STEEL. Twin Falls, Idaho. Storage charges, 400.
- RAILS, STEEL RELAY. Gueydan, La., to East St. Louis, Ill., 543.
- RAILS, VEHICLE. Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).
- RAISINS. California to Boise, Idaho, via Ogden, Utah, 375.
- ROOFING, COMPOSITION. Central freight association territory to and from trunk line and New England territories, 84.
- ROOFING, PREPARED:  
Central freight association territory to and from trunk line and New England territories, 84.  
Lockland, Ohio, to Everett and Tacoma, Wash., and San Francisco, Los Angeles, and San Bernardino, Calif., 484.
- RUBBER GOODS. Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).
- SALT:  
Grand Saline, Tex., to Natchez, Miss., 558 (571).  
Portland, Oreg., to Washington, Idaho, Montana, and Oregon, 169.

- SAWDUST.** Bushwick station, Brooklyn, N. Y. Demurrage and track storage charges, 1.
- SHADES, LAMP.** Official classification territory. Ratings, 413.
- SHAFTS, VEHICLE.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).
- SHAVINGS, COTTONSEED-HULL.** East St. Louis, Ill., to Hopewell, Va., 533.
- SHEEP.** Texas to Natchez, Miss., 558 (570).
- SHINGLES, ASPHALT.** Central freight association territory to and from trunk line and New England territories, 84.
- SHOOKS, BOX.** New Orleans, La., to Texas, 488.
- SIRUP.** Mobridge, S. Dak., from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., 307.
- SOAP.** Mobridge, S. Dak., from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., 307.
- SOCKETS, VEHICLE.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).
- SODA, NITRATE OF.**  
     Norfolk, Va., to Gibbstown, N. J., 384.  
     Pensacola, Fla., to North Birmingham, Ala., 391.
- SPIKES.** New Madrid, Mo., to Madison, Ill., 325.
- SPICES.** New Madrid, Mo., to Madison, Ill., 325.
- SPRINGS, VEHICLE.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).
- STARCH.** Mobridge, S. Dak., from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., 307.
- STAVES.** New Orleans, La., to Texas, 488.
- STONE.** Waukesha, Wis. Switching charges, 503.
- STONE, CRUSHED.** Lambertville, N. J., to Port Ivory, N. Y., 406.
- SUGAR:**  
     Mobridge, S. Dak., from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., 307.  
     New Orleans, La., to Harrodsburg, Ky., 373.  
     New Orleans, La., to Texas, 23.
- SULPHUR.** Bryan Mound, Tex., to Connable, Ala., 538.
- SULPHUR, CRUDE.** Bryan Mound and Freeport, Tex., and Sulphur Mine, La., to Pulp and Lebanon, Oreg., and Camas, Wash., 176.
- TIRES, BAR IRON OR STEEL.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).
- VEGETABLES.** Washington, Oregon, and Idaho to various destinations, 266.
- VEHICLE PARTS.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583.
- VEHICLES, SELF-PROPELLING.** Eastern defined territories to Utah common points, 507.
- VINEGAR.** Mobridge, S. Dak., from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., 307.
- WASHING COMPOUND.** Mobridge, S. Dak., from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., 307.
- WHEAT.** Montana to Great Falls, Mont., milled into flour and the product shipped to St. Paul and Minneapolis, Minn., and Seattle and Tacoma, Wash., 151.
- WHEELS, FIFTH.** Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings, 583 (584).
- WHEELS, VEHICLE.** Rock Hill, S. C., from Oxford, N. C., 583 (584, 590).
- WIRE.** San Diego, Calif., from Niles, Mich., and Weehawken, N. J., 499.
- WOOD, FUEL.** Waukesha, Wis. Switching charges, 503.

## TABLE OF LOCALITIES.

[The number in parentheses following citation indicates where locality is considered.]

- Aberdeen, Idaho, from Portland, Oreg. Salt, 169 (171).  
 Aberdeen, S. Dak., from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn. Wholesale groceries, 307.  
 Acme, Tex., to Natchez, Miss. Cement plaster, 558 (571).  
 Alabama to Copperhill, Tenn. Sulphuric acid, 423.  
 Alabama from Milton and Sharon, Pa., and Warren, Ohio. New tank cars, 235.  
 Alabama to Ohio River crossings and c. f. a. territory. Pig iron, 576.  
 Alabama from Plasterco, Tex. Cement plaster, 293.  
 Angola, La., to and from Kansas City and St. Louis, Mo., and Memphis, Tenn. Class and commodity rates; fourth section, 105 (108).  
 Arizona from Colorado common points. Class rates, 439 (462).  
 Arizona from Oregon, California, and Nevada. Potatoes and onions; dunnage allowances, 334.  
 Arkansas from Kansas. Apples, 198.  
 Arkansas from Louisiana, Arkansas, Kansas, Oklahoma, Texas, Missouri, and Mississippi. Crossties, 73.  
 Arkansas to Missouri, Illinois, Tennessee, Arkansas, Louisiana, and Wisconsin. Crossties, 73.  
 Arkansas to and from Natchez, Miss. Class and commodity rates, 105.  
 Arkansas from Plasterco, Tex. Cement plaster, 293.  
 Arkinda, Ark., to and from Natchez, Miss. Class and commodity rates, 105.  
 Ashdown, Ark., to and from Natchez, Miss. Class and commodity rates, 105.  
 Ashland, Wis., from Kansas, Nebraska, Wyoming, South Dakota, Montana, and Colorado, reconsigned at Kansas City, Mo. Hay, 408.  
 Atchison, Kans., to Texarkana, Tex.-Ark. Apples, 198.  
 Atchison County, Kans., to Oklahoma and Texas. Apples, 198.  
 Atlanta, Ga., to Copperhill, Tenn. Sulphuric acid, 423 (424).  
 Atlanta, Ga., from Milton, Pa. New tank cars, 235.  
 Atlanta, Ga., from Oxford, N. C. Buggy wheels; fourth section, 583 (591).  
 Atlanta, Mich., from Fayville, Ill. High explosives, 26.  
 Atlantic ports to and from c. f. a. trunk line, and New England territories. Building and roofing paper, 84 (103).  
 Atlantic seaboard territory to Colorado common points, via Galveston, Tex. Class and commodity rates, 439 (460).  
 Auburn, N. Y., to Rock Hill, S. C. Bolts, nuts, vehicle forgings, and fifth wheels, 583 (592).  
 Augusta, Kans., to Houston, Tex. Window glass, 380.  
 Avard, Okla., from Rapson, Colo. Bituminous nut coal, 164.  
 Banks, Ark., to and from Natchez, Miss. Class and commodity rates, 105.  
 Barkwood, Ga., to Middlesborough, Ky. Iron ore, 519.

- Barnegat, N. J., to Tuckerton, N. J. Company material, 319.  
 Barnesville, Ga., from Oxford, N. C. Buggy wheels, fourth section, 583 (591).  
 Bath, Pa., to and from various points. Merchandise, 387.  
 Bath Beach, N. Y., from Westville, S. C. Flour, 493.  
 Bath Junction, Pa., to and from various points. Merchandise, 387.  
 Baton Rouge, La., to and from Kansas City and St. Louis, Mo., and Memphis, Tenn.  
     Class and commodity rates; fourth section, 105 (108).  
 Beaumont, Tex., from Kansas. Apples, 198.  
 Beaumont, Tex., from New Orleans, La. Lumber and articles, 488.  
 Birmingham, Ala., to Nashville, Tenn. Cottonseed feed meal, 580.  
 Birmingham, Ala., to New England points. Pig iron, 576.  
 Black Rock, N. Y., from south of the Ohio, or west of the Mississippi, transited and  
     reconsigned to various destinations. Lumber, 31.  
 Boise, Idaho, from California, via Ogden, Utah. Dried fruits, 375.  
 Boston, Mass., to Little Rock, Ark. Cotton piece goods, 18.  
 Boston, Mass., to official classification territory. Building and roofing paper and pre-  
     pared roofing, 84 (96).  
 Boston, Mass., from Vergennes and Brandon, Vt. Milk, 269.  
 Bowling, Va., from c. f. a. territory, Pennsylvania, Maryland, West Virginia, and  
     Virginia, milled and the product shipped to Carolina territory. Grain, 63.  
 Boy River, Minn., to Morrison, Ill., via Minnesota Transfer, Minn. Cedar posts, 495.  
 Brandon, Vt., to Boston, Mass. Milk, 269.  
 Breckenridge, Mich., to Charleston, S. C. Hay, 331.  
 Broadway, Va., from c. f. a. territory, Pennsylvania, Maryland, West Virginia, and  
     Virginia, milled and the product shipped to Carolina territory. Grain, 63.  
 Brooklyn, N. Y. (Bushwick station). Sawdust; demurrage and track storage charges, 1.  
 Brooklyn, N. Y., to New Jersey. Brewers' wet grain, 317.  
 Brown County, Kans., to Oklahoma and Texas. Apples, 198.  
 Bryan Mound, Tex., to Connable, Ala. Sulphur, 538.  
 Bryan Mound, Tex., to Pulp and Lebanon, Oreg., and Camas, Wash. Crude sul-  
     phur, 176.  
 Bucyrus, N. Dak., from Mobridge and Aberdeen, S. Dak. Wholesale groceries, 307  
     (313).  
 Buffalo, N. Y., to Rock Hill, S. C. Carriage dashes, 583 (590).  
 Buffalo, N. Y., to Salt Lake City, Ogden, and Provo, Utah. Self-propelling vehicles,  
     507.  
 Buffalo, N. Y., from south of the Ohio, or west of the Mississippi, transited and recon-  
     signed to various destinations. Lumber, 31.  
 Buffalo Gap, S. Dak., to Des Moines, Iowa. Crude clay, 548.  
 Buffington, Ind., to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South  
     Dakota, and Michigan. Cement, 225 (230).  
 Bunkie, La., to New Orleans, La., for export and interstate movement. Cotton, 527.  
 Bushwick Station, Brooklyn, N. Y. Sawdust; demurrage and track storage charges, 1.  
 Butler, N. J., from Waynesville, N. C. Lumber, 28.  
 California to Boise, Idaho, via Ogden, Utah. Dried fruits, 375.  
 California to California, Arizona, New Mexico, Colorado, Texas, Kansas, Oklahoma,  
     Missouri, and Illinois. Potatoes and onions; dunnage allowances, 334.  
 California from Colorado common points. Class rates, 439 (462).  
 California from Gypsum, Utah. Plaster, 433.  
 California from Oregon, California, and Nevada. Potatoes and onions; dunnage  
     allowances, 334.

- California to various destinations. Hops, 356.
- Camas, Wash., from Bryan Mound and Freeport, Tex., and Sulphur Mine, La. Crude sulphur, 176.
- Camden, Ark., to and from Natchez, Miss. Class and commodity rates, 105.
- Camp 15, Mich., from Fayville, Ill. High explosives, 26.
- Canada from California. Hops, 356.
- Canada to and from Omaha, Nebr. Summer excursion fares, 255.
- Caney, Kans., to Houston, Tex. Window glass, 380.
- Cape Charles, Va., to Shenandoah, Pa. Mine props, 249.
- Carbondale, Pa., from Waynesville, N. C. Lumber, 28.
- Carolina territory from c. f. a. territory, Pennsylvania, Maryland, West Virginia, and Virginia, milled at Virginia points. Grain, 63.
- Carteret, N. J., to Philadelphia, Pa. Acid phosphate, 550.
- Cedar Rapids, Nebr., from Hackett, Ark. Semianthracite coal, 379.
- Central City, Ky., to Ohio, Indiana, and Michigan. Bituminous coal, 187.
- Central freight association territory to Carolina territory, milled at Virginia points. Grain, 63.
- Central freight association territory to Rock Hill, S. C. Vehicle parts and material, 583.
- Central freight association territory from southern blast furnaces. Pig iron, 576.
- Central freight association territory to and from trunk line and New England territories. Building and roofing paper, 84.
- Centralia, Ill., from Minneapolis, Minn., originating at Duluth, Minn. Potatoes, 523.
- Chanute, Kans., from Milton, Pa., and North St. Louis, Mo. New empty tank cars, 593.
- Charleston, S. C., from Breckenridge, Mich. Hay, 331.
- Charleston, S. C., from Sharon, Pa. New tank cars, 235.
- Chataignier, La., to New Orleans, La., for export and interstate movement. Cotton, 527.
- Chattanooga, Tenn., to Fort Payne, Ala. Brick, 337.
- Chester, Pa., from Miley, S. C. Lumber, 545.
- Chicago, Ill., to Carolina territory, milled at Virginia points. Grain, 63.
- Chicago, Ill., to and from Colorado common points. Class and commodity rates, 439 (444, 448).
- Chicago, Ill., from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).
- Chicago, Ill., from Kansas, Nebraska, Wyoming, South Dakota, Montana, and Colorado, reconsigned at Kansas City, Mo. Hay, 408.
- Chicago, Ill., to Mobridge, S. Dak. Wholesale groceries, 307.
- Chicago, Ill., to official classification territory. Building and roofing paper and prepared roofing, 84 (96).
- Chicago, Ill., from St. Louis and other Missouri points, East St. Louis, Ill., Louisiana, Arkansas, Kansas, Oklahoma, Texas, and Mississippi. Crosties, 73.
- Chicago, Ill., from Tacoma, Wash., originating in China. Dried egg albumen, 361.
- Chicago, Ill., from Washington, Oregon, and Idaho. Fresh fruits, vegetables, and fish, 266.
- Chicago stockyards, Ill. Live stock; loading and unloading charges, 209.
- China to Tacoma, Wash., destined to Chicago, Ill. Dried egg albumen, 361.
- Cincinnati, Ohio, from Kentucky mines. Bituminous coal, 187.
- Cincinnati, Ohio, to Rock Hill, S. C. Special iron, 583.
- Clearfield region, Pa., to Barnegat, N. J. Coal, 319.
- Cleveland, Ohio, to Rock Hill, S. C. Special iron, 583.
- Cleveland, Ohio, to Salt Lake City, Ogden, and Provo, Utah. Self-propelling vehicles, 507.

- Clifton, Ariz., to St. Louis, Mo. Empty beer packages, 555.  
 Coffeyville, Kans., to Houston, Tex. Window glass, 380.  
 Coffeyville, Kans., from Oklahoma, destined to St. Louis, Mo. Gasoline, 281.  
 Coffeyville, Kans., to St. Louis, Mo. Class and commodity rates, 497.  
 Colorado to Kansas City, Mo., reconsigned to Chicago, Peoria, and East St. Louis, Ill., Keokuk, Iowa, St. Louis, Mo., St. Paul, Minneapolis, and Duluth, Minn., and Ashland, Wis. Hay, 408.  
 Colorado from Oregon, California, and Nevada. Potatoes and onions; dunnage allowances, 334.  
 Colorado from Plasterco, Tex. Cement plaster, 293.  
 Colorado common points from Atlantic seaboard territory, via Galveston, Tex. Class and commodity rates, 439 (460).  
 Colorado common points to Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. Class rates, 439 (462).  
 Colorado common points to and from Chicago, Ill., and Mississippi and Missouri rivers. Class and commodity rates, 439 (444, 448).  
 Colorado common points to and from Texas and New Mexico. Class rates, 439 (453).  
 Colorado Springs, Colo., to and from Kansas and Nebraska. Class rates, 439 (449).  
 Connable, Ala., from Bryan Mound, Tex. Sulphur, 538.  
 Connecticut to Rock Hill, S. C. Vehicle parts and material, 583.  
 Connersville, Ind., to Salt Lake City, Ogden, and Provo, Utah. Self-propelling vehicles, 507.  
 Copperhill, Tenn., from Mississippi, Alabama, and Georgia. Sulphuric acid, 423.  
 Cortex No. 2 mine, Pa., to Barnegat, N. J. Coal, 319.  
 Corvallis, Oreg., to Nashville, Tenn. Flour, 491.  
 Costello, Pa., to Curriers, N. Y. Lumber, 329.  
 Curriers, N. Y., from Costello, Pa. Lumber, 329.  
 Cushing, Okla., from Milton, Pa., and North St. Louis, Mo. New empty tank cars, 593.  
 Dallas, Tex., from Poteau, Okla. Glass bottles, 10.  
 Dallas, Tex., from San Francisco, Calif. News print paper, 39.  
 Deer Park, Ill., to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (232).  
 Delaware from Navarro, Pa. Cement, 387 (388).  
 Delaware to Shenandoah, Pa. Mine props, 249.  
 Delaware, Okla., to St. Louis, Mo., via Coffeyville, Kans. Gasoline, 281.  
 Denver, Colo., from Atlantic seaboard territory, via Galveston, Tex. Class and commodity rates, 439 (460).  
 Denver, Colo., to Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. Class rates, 439 (462).  
 Denver, Colo., to and from Chicago, Ill., Mississippi and Missouri rivers, Kansas, Nebraska, Texas, and New Mexico. Class rates, 439 (444, 449, 453).  
 Des Moines, Iowa, from Buffalo Gap, S. Dak. Crude clay, 548.  
 Des Moines, Iowa, to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (230).  
 Des Moines, Iowa, from Kansas City, Mo. Lumber and articles, 370.  
 Detroit, Mich., to Salt Lake City, Ogden, and Provo, Utah. Self-propelling vehicles, 507.  
 Dillsboro, N. C., to West Albany, N. Y. Lumber, 28.  
 Doniphan County, Kans., to Oklahoma and Texas. Apples, 198.  
 Duluth, Minn., to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (230).

- Duluth, Minn., from Kansas, Nebraska, Wyoming, South Dakota, Montana, and Colorado, reconsigned at Kansas City, Mo. Hay, 408.
- Duluth, Minn., to Minneapolis, Minn., reshipped to Centralia, Ill. Potatoes, 523.
- Duluth, Minn., to Mobridge, S. Dak. Wholesale groceries, 307.
- East Buffalo, N. Y., from south of the Ohio, or west of the Mississippi, transited and re-consigned to various destinations. Lumber, 31.
- East Jaffrey, N. H., to Bushwick station, Brooklyn, N. Y. Sawdust, 1.
- East Norwood, Ohio, from Gable, S. C., via Potomac Yard, Va. Lumber, 541.
- East Point, Ga., from Oxford, N. C. Buggy wheels; fourth section, 583 (591).
- East St. Louis, Ill., from Gueydan, La. Steel relay rails, 543.
- East St. Louis, Ill., to Hopewell, Va. Cottonseed-hull shavings, 533.
- East St. Louis, Ill., from Kansas, Nebraska, Wyoming, South Dakota, Montana, and Colorado, reconsigned at Kansas City, Mo. Hay, 408.
- East St. Louis, Ill., to Kansas City, Mo. Cottonseed-hull bran, 353.
- East St. Louis, Ill., from Missouri, Louisiana, Arkansas, Kansas, Oklahoma, Texas, and Mississippi. Croesties, 73.
- Eastern defined territories to Utah common points. Self-propelling vehicles, 507.
- Eastern points from Washington, Oregon, and Idaho. Fresh fruits, vegetables, and fish, 266.
- Echo, Tex., from New Orleans, La. Lumber and articles, 488.
- Edinburg, Va., from c. f. a. territory, Pennsylvania, Maryland, West Virginia, and Virginia, milled and the product shipped to Carolina territory. Grain, 63.
- Elizabethport, N. J. Bituminous coal, demurrage charges, 344.
- Ellendale, Del., to Shenandoah, Pa. Mine props, 249.
- Emporium, Pa., to South Amboy, N. J. Dynamite; dunnage, 173.
- Erie, Pa., to official classification territory. Building and roofing paper and prepared roofing, 84 (96).
- Escanaba, Mich., from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).
- Eunice, La., to New Orleans, La., for export and interstate movement. Cotton, 527.
- Everett, Wash., from Lockland, Ohio. Expansion paving joints and prepared roofing, 484.
- Fayville, Ill., to Atlanta, Mich. High explosives, 26.
- Fayville, Ill., to Illinois, Michigan, and Indiana. High explosives, 393.
- Finley, Ore., from Portland, Ore. Salt, 169 (171).
- Flint, Mich., to Salt Lake City, Ogden, and Provo, Utah. Self-propelling vehicles, 507.
- Florida to Tennessee. Citrus fruits, 481.
- Ford Switch, Ala., to interstate destinations. Lumber, 159.
- Fordyce, Ark., to and from Natchez, Miss. Class and commodity rates, 105.
- Fort Payne, Ala., from Chattanooga, Tenn. Brick, 337.
- Fort Smith, Ark., from Niagara Falls, N. Y. News print paper, 514.
- Fort Worth, Tex., from Kansas. Apples, 198.
- Franklin City, Va., to Shenandoah, Pa. Mine props, 249.
- Frederick, Md., to Carolina territory, milled at Virginia points. Grain, 63.
- Fredonia, Kans., to Houston, Tex. Window glass, 380.
- Freeport, Tex., to Pulp and Lebanon, Ore., and Camas, Wash. Crude sulphur, 176.
- Fresno, Calif., to Boise, Idaho, via Ogden, Utah. Dried fruits, 375.
- Fresno, Calif., from Gypsum, Utah. Plaster, 433 (435).
- Gable, S. C., to East Norwood, Ohio, via Potomac Yard, Va. Lumber, 541.
- Galveston, Tex., from Atlantic seaboard territory, destined to Colorado common points. Class rates, 439 (460).
- 52 I. C. C.



- Galveston, Tex., to and from Colorado common points. Class rates 439 (453).  
 Galveston, Tex., from Kansas. Apples, 198.  
 Gascayne, N. Dak., from Mobridge and Aberdeen, S. Dak. Wholesale groceries, 307 (313).  
 Georgia to Copperhill, Tenn. Sulphuric acid, 423.  
 Georgia from Milton and Sharon, Pa., and Warren, Ohio. New tank cars, 235.  
 Gibbstown, N. J., from Norfolk, Va. Nitrate of soda, 384.  
 Grand Saline, Tex., to Natchez, Miss. Salt, 558 (571).  
 Grangeville Junction, La., to Memphis, Tenn., via Natalbany, La. Hardwood logs; divisions, 429.  
 Great Falls, Mont., from Montana, milled into flour and the product shipped to St. Paul and Minneapolis, Minn., and Seattle and Tacoma, Wash. Wheat, 151.  
 Griffin, Ga., from Oxford, N. C. Buggy wheels; fourth section, 583 (591).  
 Gueydan, La., to East St. Louis, Ill. Steel relay rails, 543.  
 Gulfport, Miss., to Copperhill, Tenn. Sulphuric acid, 423 (424).  
 Gulfport, Miss., from Milton, Pa. New tank cars, 235.  
 Gurdon, Ark., to and from Natchez, Miss. Class and commodity rates, 105.  
 Gypsum, Utah, to California. Plaster, 433.  
 Hackett, Ark., to Cedar Rapids, Nebr. Semianthracite coal, 379.  
 Hampton, N. J., from Waynesville, N. C. Lumber, 28.  
 Hannibal, Mo., to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (230).  
 Harrisonburg, Va., from c. f. a. territory, Pennsylvania, Maryland, West Virginia, and Virginia, milled and the product shipped to Carolina territory. Grain, 63.  
 Harrodsburg, Ky., from New Orleans, La. Sugar, 373.  
 Hattiesburg, Miss., from Milton, Pa. New tank cars, 235.  
 Haynes, N. Dak., from Mobridge and Aberdeen, S. Dak. Wholesale groceries, 307 (313).  
 Henderson, Ky., to Ohio, Indiana, and Michigan. Bituminous coal, 187.  
 Hill City, Idaho, from Portland, Oreg. Salt, 169 (171).  
 Hoboken, N. J. Pig iron; storage charges, 397.  
 Homer, La., to New York, N. Y. Oak lumber, 327.  
 Hopewell, Va., from East St. Louis, Ill. Cottonseed-hull shavings, 533.  
 Hopewell, Va., from Louviers, Colo. Nitrating acid, 427.  
 Houston, Tex., from Kansas. Window glass, 380.  
 Houston, Tex., to Richmond, Va. Scrap iron and scrap rails, 22.  
 Howden, Okla., to St. Louis, Mo., via Coffeyville, Kans. Gasoline, 281.  
 Huntington, W. Va., from New Orleans, La. Scrap steel rails, 419.  
 Hutchinson, Kans., to Texarkana, Tex.-Ark. Apples, 198.  
 Hutton, Md. Switching, 252.  
 Idaho from Colorado common points. Class rates, 439 (462).  
 Idaho from Portland, Oreg. Salt, 169.  
 Idaho to various destinations. Fresh fish, 266.  
 Illinois from Fayville, Ill. High explosives, 393.  
 Illinois to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (230).  
 Illinois from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).  
 Illinois from Louisiana, Arkansas, Kansas, Oklahoma, Texas, Missouri, and Mississippi. Cressies, 73.  
 Illinois to Niles Center, Ill. Bituminous coal, 339.  
 Illinois from Oregon, California, and Nevada. Potatoes and onions; dunnage allowances, 334.

- Illinois from Plasterco, Tex. Cement plaster, 293.  
 Illinois to Rock Hill, S. C. Vehicle parts and material, 583.  
 Independence, Kans., to Houston, Tex. Window glass, 380.  
 Independence, Kans., from St. Louis, Mo. Class and commodity rates, 497.  
 Indiana from Fayville, Ill. High explosives, 393.  
 Indiana to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (230).  
 Indiana from Kentucky mines. Bituminous coal, 187.  
 Indiana to Niles Center, Ill. Bituminous coal, 339.  
 Indiana to Rock Hill, S. C. Vehicle parts and material, 583.  
 Indiana-Illinois state line, points east of, from Kentucky mines. Bituminous coal, 187.  
 Indianapolis, Ind., to Salt Lake City, Ogden, and Provo, Utah. Self-propelling vehicles, 507.  
 Iola, Kans., to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (230).  
 Iowa to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (230).  
 Iowa from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).  
 Iowa from Plasterco, Tex. Cement plaster, 293.  
 Jackson, Ga., from Oxford, N. C. Buggy wheels; fourth section, 583 (591).  
 Jackson County, Kans., to Oklahoma and Texas. Apples, 198.  
 Jacksonville, Pa., to and from various points. Merchandise, 387.  
 Jacksonville, Tex., from Kansas. Apples, 198.  
 Jefferson County, Kans., to Oklahoma and Texas. Apples, 198.  
 Jeffersonville, Ind., to and from Louisville, Ky. Passenger fares, 366.  
 Jennings, La., from Richard City, Tenn. Portland cement, 517.  
 Jersey City, N. J. Apples; demurrage charges, 304.  
 Jersey City, N. J., to Louin, Miss. Old rails and angle bars, 363.  
 Jersey City, N. J., from Navarro, Pa. Cement, 387 (388).  
 Jersey City, N. J., to New Jersey. Brewers' wet grain, 317.  
 Jersey City, N. J., from Pittsburgh, Pa. Horses, 552.  
 Johnstown, Pa., to Rock Hill, N. C. Bar iron and steel tires, 583 (592).  
 Johnstown, Pa., from Spring Hill, La. Yellow-pine lumber, 486.  
 Joliet, Ill., to Twin Falls, Idaho. Steel rails, 400.  
 Joso, Wash., from Portland, Oreg. Salt, 169 (171).  
 Kalamazoo, Mich., to c. f. a. territory. Paper boards, 84 (96).  
 Kalamazoo, Mich., to Rock Hill, S. C. Carriage springs and axles, 583 (588).  
 Kansas to and from Denver or Pueblo, Colo. Class rates, 439 (449).  
 Kansas to Houston, Tex. Window glass, 380.  
 Kansas to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (230).  
 Kansas to Kansas City, Mo., reconsigned to Chicago, Peoria, and East St. Louis, Ill., Keokuk, Iowa, St. Louis, Mo., St. Paul, Minneapolis, and Duluth, Minn., and Ashland, Wis. Hay, 408.  
 Kansas to Missouri, Illinois, Tennessee, Arkansas, Louisiana, and Wisconsin. Crock-ties, 73.  
 Kansas to Oklahoma and Texas. Apples, 198.  
 Kansas from Oregon, California, and Nevada. Potatoes and onions; dunnage allowances, 334.  
 Kansas from Plasterco, Tex. Cement plaster, 293.  
 Kansas from Rapson, Colo. Bituminous nut coal, 164.

- Kansas City, Mo., to Des Moines, Iowa. Lumber and articles, 370.
- Kansas City, Mo., from East St. Louis, Mo. Cottonseed-hull bran, 353.
- Kansas City, Mo., to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (230).
- Kansas City, Mo., from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).
- Kansas City, Mo., from Kansas, Nebraska, Wyoming, South Dakota, Montana, and Colorado, reconsigned to Chicago, Peoria, and East St. Louis, Ill., Keokuk, Iowa, St. Louis, Mo., St. Paul, Minneapolis, and Duluth, Minn., and Ashland, Wis. Hay, 408.
- Kansas City, Mo., to and from New Orleans, Baton Rouge, and Angola, La., and Natchez and Vicksburg, Miss. Class and commodity rates; fourth section, 105 (108).
- Kansas City, Mo., from Red Granite, Wis. Granite paving blocks, 330.
- Kansas gas belt, Kans., to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (230).
- Kemmerer, Wyo., from Portland, Oreg. Salt, 169 (171).
- Kentucky to Niles Center, Ill. Bituminous coal, 339.
- Kentucky mines to Ohio, Indiana, and Michigan. Bituminous coal, 187.
- Keokuk, Iowa, from Kansas, Nebraska, Wyoming, South Dakota, Montana, and Colorado, reconsigned at Kansas City, Mo. Hay, 408.
- Kingmont, Mont., from Mobridge and Aberdeen, S. Dak. Wholesale groceries, 307 (313).
- Kingston, N. Y., from Waynesville, N. C. Lumber, 28.
- Kokomo, Ind., to Salt Lake City, Ogden, and Provo, Utah. Self-propelling vehicles, 507.
- La Salle, Ill., to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (230).
- Lake Erie ports, for transshipment. Coal; demurrage rules, 181.
- Lakeport, Idaho, from Portland, Oreg. Salt, 169 (171).
- Lambertville, N. J., to Port Ivory, N. Y. Crushed stone, 406.
- Lansing, Mich., to Salt Lake City, Ogden, and Provo, Utah. Self-propelling vehicles, 507.
- Laona, Wis., to M., St. P. & S. S. M. Ry. points. Lumber and forest products; divisions, 7.
- Laquin, Pa., to Springfield, N. J. Lumber, 21.
- Laredo, Tex., to San Antonio, Tex., originating at Monterey, Mexico. Iron and iron articles, 521.
- Latourell, Oreg., from Portland, Oreg. Salt, 169 (171).
- Leavenworth County, Kans., to Oklahoma and Texas. Apples, 198.
- Lebanon, Oreg., from Bryan Mound and Freeport, Tex., and Sulphur Mine, La. Crude sulphur, 176.
- Lehigh region, Pa., to New York, New Jersey, and Pennsylvania. Anthracite coal, 62.
- Lenepah, Okla., to St. Louis, Mo., via Coffeyville, Kans. Gasoline, 281.
- Lincoln, Nebr., from Kansas gas belt. Cement, 225 (232).
- Linville, Va., from c. f. a. territory, Pennsylvania, Maryland, West Virginia, and Virginia, milled and the product shipped to Carolina territory. Grain, 63.
- Little Rock, Ark., from Massachusetts, Maine, New Hampshire, Rhode Island, New York, New Jersey, and Pennsylvania. Cotton piece goods, 18.
- Little Rock, Ark., from Millville, N. J. Cotton piece goods, 18.
- Little Rock, Ark., from Niagara Falls, N. Y. News print paper, 514.
- Lockland, Ohio, to Everett and Tacoma, Wash., and San Francisco, Los Angeles, and San Bernardino, Calif. Expansion paving joints, and prepared roofing, 484.

- London, England, from California. Hops, 356.
- Longsdorf, Pa., to Carolina territory, milled at Virginia points. Grain, 63.
- Loretto, Md., to Shenandoah, Pa. Mine props, 249.
- Los Angeles, Calif., from Lockland, Ohio. Expansion paving joints and prepared roofing, 484.
- Louin, Miss., from Jersey City, N. J. Old rails and angle bars, 363.
- Louisiana from Louisiana, Arkansas, Kansas, Oklahoma, Texas, Missouri, and Mississippi. Crossties, 73.
- Louisiana from Milton and Sharon, Pa., and Warren, Ohio. New tank cars, 235.
- Louisiana to Missouri, Illinois, Tennessee, Arkansas, Louisiana, and Wisconsin. Crossties, 73.
- Louisiana to and from Natchez, Miss. Class and commodity rates, 105.
- Louisiana to New Orleans, La., for export and interstate movement. Cotton, 527.
- Louisiana from Plasterco, Tex. Cement plaster, 293.
- Louisville, Ky., to and from Jeffersonville and New Albany, Ind. Passenger fares, 366.
- Louviers, Colo., to Hopewell, Va. Nitrating acid, 427.
- McGehee, Ark., to and from Natchez, Miss. Class and commodity rates, 105.
- McKees Rock, Pa., from Waynesville, N. C. Lumber, 28.
- McMinnville, Tenn., from Florida. Citrus fruits, 481.
- Madison, Ill., from Louisiana, Arkansas, Kansas, Oklahoma, Texas, Missouri, and Mississippi. Crossties, 73.
- Madison, Ill., from New Madrid, Mo. Old steel rails and fastenings, 325.
- Madison, Wis., from California. Hops, 356.
- Madison, Wis., from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).
- Maine to and from c. f. a. and trunk line territories. Building and roofing paper, 84 (103).
- Maine to Little Rock, Ark. Cotton piece goods, 18.
- Marmarth, N. Dak., from Mobridge and Aberdeen, S. Dak. Wholesale groceries, 307 (313).
- Marshall, Tex., to Natchez, Miss. Cattle, horses, mules, hogs, and sheep, 558 (570).
- Maryland to Carolina territory, milled at Virginia points. Grain, 63.
- Maryland from Navarro, Pa. Cement, 387 (388).
- Maryland to Rock Hill, S. C. Vehicle parts and material, 583.
- Maryland to Shenandoah, Pa. Mine props, 249.
- Mason City, Iowa, to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (230).
- Massachusetts to Little Rock, Ark. Cotton piece goods, 18.
- Massachusetts to Rock Hill, S. C. Vehicle parts and material, 583.
- Mechanicsburg, Pa., to Rock Hill, S. C. Fifth wheels, 583 (592).
- Memphis, Tenn., from Grangeville Junction, La., via Natalbany, La. Hardwood logs; divisions, 429.
- Memphis, Tenn., to and from New Orleans, Baton Rouge, and Angola, La., and Natchez and Vicksburg, Miss. Class and commodity rates; fourth section, 105 (108).
- Memphis, Tenn., to Rock Hill, S. C. Vehicle parts and material, 583.
- Meridian, Miss., to Copperhill, Tenn. Sulphuric acid, 423 (424).
- Meridian, Miss., from Sharon, Pa. New tank cars, 235.
- Miami, W. Va., to Toledo, Ohio. Crude oil, 12.
- Michigan from Fayville, Ill. High explosives, 393.
- Michigan to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, and South Dakota. Cement, 225 (232).
- Michigan from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).

- Michigan from Kentucky mines. Bituminous coal, 187.  
 Michigan to Rock Hill, S. C. Vehicle parts and material, 583.  
 Middlesborough, Ky., from Barkwood, Ga. Iron ore, 519.  
 Miley, S. C., to Norfolk, Va., and North Philadelphia and Chester, Pa. Lumber, 545.  
 Miller, Ore., from Portland, Ore. Salt, 169 (171).  
 Millville, N. J., to Little Rock, Ark. Cotton piece goods, 18.  
 Milton, Pa., to Chanute, Kans., and Cushing, Okla. New empty tank cars, 593.  
 Milton, Pa., to the southeast. New tank cars, 235.  
 Milwaukee, Wis., from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).  
 Minneapolis, Minn., from Duluth, Minn., reshipped to Centralia, Ill. Potatoes, 523.  
 Minneapolis, Minn., from Kansas, Nebraska, Wyoming, South Dakota, Montana, and Colorado, reconsigned at Kansas City, Mo. Hay, 408.  
 Minneapolis, Minn., from Montana, milled in transit at Great Falls, Mont. Wheat, 151.  
 Minnesota to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (230).  
 Minnesota from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).  
 Minnesota Transfer, Minn., from Spur 325, Minn., destined to Morrison, Ill. Cedar posts, 495.  
 Mississippi to Copperhill, Tenn. Sulphuric acid, 423.  
 Mississippi from Milton and Sharon, Pa., and Warren, Ohio. New tank cars, 235.  
 Mississippi to Missouri, Illinois, Tennessee, Arkansas, Louisiana, and Wisconsin. Crossties, 73.  
 Mississippi from Plasterco, Tex. Cement plaster, 293.  
 Mississippi River, points west of, to Buffalo, East Buffalo, Black Rock, or North Tonawanda, N. Y., transited and reconsigned to various destinations. Lumber, 31.  
 Mississippi River, territory east of, and north of Ohio and Potomac rivers, to and from Omaha, Nebr. Summer excursion fares, 255.  
 Mississippi River to and from Colorado common points. Class and commodity rates, 439 (444, 448).  
 Missouri to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (230).  
 Missouri from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).  
 Missouri from Louisiana, Arkansas, Kansas, Oklahoma, Texas, Missouri, and Mississippi. Crossties, 73.  
 Missouri to Missouri, Illinois, Tennessee, Arkansas, Louisiana, and Wisconsin. Crossties, 73.  
 Missouri from Oregon, California, and Nevada. Potatoes and onions; dunnage allowances, 334.  
 Missouri from Plasterco, Tex. Cement plaster, 293.  
 Missouri to Rock Hill, S. C. Vehicle parts and material, 583.  
 Missouri River to and from Colorado common points. Class and commodity rates, 439 (444, 448).  
 Missouri River from Washington, Oregon, and Idaho. Fresh fruits and vegetables, 266.  
 Mobridge, S. Dak., from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn. Wholesale groceries, 307.  
 Mobridge, S. Dak., to North Dakota and Montana. Wholesale groceries, 307.  
 Modesto, Calif., from Gypsum, Utah. Plaster, 433 (435).  
 Monongahela, Pa., to Rock Hill, S. C. Vehicle springs and axles, 583 (592).

- Montana from Colorado common points. Class rates, 439 (462).
- Montana to Great Falls, Mont., milled into flour and the product shipped to St. Paul and Minneapolis, Minn., and Seattle and Tacoma, Wash. Wheat, 151.
- Montana to Kansas City, Mo., reconsigned to Chicago, Peoria, and East St. Louis, Ill., Keokuk, Iowa, St. Louis, Mo., St. Paul, Minneapolis, and Duluth, Minn., and Ashland, Wis. Hay, 408.
- Montana from Mobridge, S. Dak. Wholesale groceries, 307.
- Montana from Portland, Oreg. Salt, 169.
- Monterey, Mex., to Laredo, Tex., destined to San Antonio, Tex. Iron and iron articles, 521.
- Montgomery, Ala., to Copperhill, Tenn. Sulphuric acid, 423 (424).
- Montpelier, Idaho, from Portland, Oreg. Salt, 169 (171).
- Morrison, Ill., from Spur 325, Minn., via Minnesota Transfer, Minn. Cedar posts, 405.
- Murfreesboro, Ark., to and from Natchez, Miss. Class and commodity rates, 105.
- Murfreesboro, Tenn., from Florida. Citrus fruits, 481.
- Nampa, Idaho, from Portland, Oreg. Salt, 169 (171).
- Nashville, Tenn., from Birmingham, Ala. Cotton seed feed meal, 580.
- Nashville, Tenn., from Portland, Corvallis, and Silverton, Oreg. Flour, 491.
- Natalbany, La., to Memphis, Tenn., originating at Grangeville Junction, La. Hardwood logs; divisions, 429.
- Natchez, Miss., to and from Kansas City and St. Louis, Mo., and Memphis, Tenn. Class and commodity rates; fourth section, 105 (108).
- Natchez, Miss., to and from Louisiana and Arkansas. Class and commodity rates, 105.
- Natchez, Miss., to and from Texas. Class rates, 558.
- Natchez, Miss., from Texas. Cattle, horses, mules, sheep, hogs, salt, and cement plaster, 558 (570, 571).
- Navarro, Pa., to and from various points. Cement and merchandise, 387.
- Nebraska to and from Denver or Pueblo, Colo. Class rates, 439 (449).
- Nebraska from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).
- Nebraska to Kansas City, Mo., reconsigned to Chicago, Peoria, and East St. Louis, Ill., Keokuk, Iowa, St. Louis, Mo., St. Paul, Minneapolis, and Duluth, Minn., and Ashland, Wis. Hay, 408.
- Nemaha county, Kans., to Oklahoma and Texas. Apples, 198.
- Nevada to California, Arizona, New Mexico, Colorado, Texas, Kansas, Oklahoma, Missouri, and Illinois. Potatoes and onions; dunnage allowances, 334.
- Nevada from Colorado common points. Class rates, 439 (462).
- New Albany, Ind., to and from Louisville, Ky. Passenger fares, 366.
- New Burlington, Okla., from Rapson, Colo. Bituminous nut coal, 164.
- New Church, Va., to Shenandoah, Pa. Mine props, 249.
- New England from Navarro, Pa. Cement, 387 (388).
- New England territory to and from c. f. a. and trunk line territories. Building and roofing paper, 84.
- New England territory to Rock Hill, S. C. Vehicle parts and material, 583.
- New England territory from southern blast furnaces. Pig iron, 576.
- New Hampshire to Little Rock, Ark. Cotton piece goods, 18.
- New Jersey to Little Rock, Ark. Cotton piece goods, 18.
- New Jersey from Navarro, Pa. Cement, 387 (388).
- New Jersey from New York and Brooklyn, N. Y., Jersey City and Newark, N. J., and Philadelphia, Pa. Brewers' wet grain, 317.
- New Jersey from North Carolina and South Carolina. Lumber, 28.
- New Jersey to Rock Hill, S. C. Vehicle parts and material, 583.
- New Jersey from Wallaceburg, Ontario. Dried beet pulp, 145.

- New Jersey from Wyoming, Lehigh, and Schuylkill regions, Pa. Anthracite coal, 62.  
 New Madrid, Mo., to Madison, Ill. Old steel rails and fastenings, 325.  
 New Market, Va., from c. f. a. territory, Pennsylvania, Maryland, West Virginia, and Virginia, milled and the product shipped to Carolina territory. Grain, 63.  
 New Mexico to and from Colorado common points. Class rates, 439 (453, 462).  
 New Mexico from Oregon, California, and Nevada. Potatoes and onions; dunnage allowances, 334.  
 New Mexico from Plasterco, Tex. Cement plaster, 293.  
 New Orleans, La., to Harrodsburg, Ky. Sugar, 373.  
 New Orleans, La., to Huntington, W. Va. Scrap steel rails, 419.  
 New Orleans, La., to and from Kansas City and St. Louis, Mo., and Memphis, Tenn. Class and commodity rates; fourth section, 105 (108).  
 New Orleans, La., from Louisiana for export and interstate movement. Cotton, 527.  
 New Orleans, La., to Oakdale, Pa. Sulphuric acid, 505.  
 New Orleans, La., to Seattle, Wash., for export to Vladivostok, Siberia. Compressed cotton, 323.  
 New Orleans, La., to Texas. Lumber and articles, 488.  
 New Orleans, La., to Texas. Sugar, 23.  
 New York to and from c. f. a. and New England territories. Building and roofing paper, 84 (103).  
 New York to Little Rock, Ark. Cotton piece goods, 18.  
 New York from Navarro, Pa. Cement, 387 (388).  
 New York from North Carolina and South Carolina. Lumber, 28.  
 New York to Rock Hill, S. C. Vehicle parts and material, 583.  
 New York from Wallaceburg, Ontario. Dried beet pulp, 145.  
 New York from Wyoming, Lehigh, and Schuylkill regions, Pa. Anthracite coal, 62.  
 New York, N. Y., from Homer, La. Oak lumber, 327.  
 New York, N. Y., to Little Rock, Ark. Cotton piece goods, 18.  
 New York, N. Y., to Rock Hill, S. C. Carriage cloth, rubber goods, and hardware, 583 (585).  
 New York, N. Y., from various points, via Jersey City, N. J. Apples, 304.  
 New York, N. Y., from Washington, Oregon, and Idaho. Fresh fruits, vegetables, and fish, 266.  
 Newark, N. J., to New Jersey. Brewers' wet grain, 317.  
 Newark, N. J., to Rock Hill, S. C. Leather, 583 (585).  
 Newman, Ga., from Oxford, N. C. Buggy wheels; fourth section, 583 (591).  
 Niagara Falls, N. Y., to Little Rock and Fort Smith, Ark. News print paper, 514.  
 Niles, Mich., to San Diego, Calif. Flat wire braid, 499.  
 Niles Center, Ill., from Pennsylvania, West Virginia, Kentucky, Ohio, Indiana, and Illinois. Bituminous coal, 339.  
 Norfolk, Va., to Gibbstown, N. J. Nitrate of soda, 384.  
 Norfolk, Va., from Miley, S. C. Lumber, 545.  
 Norman, Okla., from Rapson, Colo. Bituminous nut coal, 164.  
 North Birmingham, Ala., from Pensacola, Fla. Nitrate of soda, 391.  
 North Carolina to New York, New Jersey, and Pennsylvania. Lumber, 28.  
 North Dakota from Mobridge, S. Dak. Wholesale groceries, 307.  
 North Philadelphia, Pa., from Miley, S. C. Lumber, 545.  
 North St. Louis, Mo., to Chanute, Kans., and Cushing, Okla. New empty tank cars, 598.  
 North Tonawanda, N. Y., from south of the Ohio, or west of the Mississippi, transited and reconsigned to various destinations. Lumber, 31.  
 Northampton, Pa., to and from various points. Merchandise, 387.  
 Northeastern district, Kans., to Oklahoma and Texas. Apples, 198.

- Northumberland, Pa., to Rock Hill, S. C. Bolts, nuts, and vehicle forgings, 583 (592).
- Nowata, Okla., to St. Louis, Mo., via Coffeyville, Kans. Gasoline, 281.
- Oakdale, Pa., from New Orleans, La. Sulphuric acid, 505.
- Ocean City, Md., to Shenandoah, Pa. Mine props, 249.
- Official classification territory. Building and roofing paper, 84.
- Official classification territory. Lamps, lamp globes, and lamp shades, 413.
- Official classification territory. Cotton belting; ratings, 15.
- Official classification territory. Counters, wall-case bases, and shelving bases; ratings, 3.
- Ogden, Utah, from California, destined to Boise, Idaho. Dried fruits, 375.
- Ogden, Utah, from eastern defined territories. Self-propelling vehicles, 507.
- Oglesby, Ill., to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota, and Michigan. Cement, 225 (232).
- Ohio from Kentucky mines. Bituminous coal, 187.
- Ohio from Navarro, Pa. Cement, 387 (388).
- Ohio to Niles Center, Ill. Bituminous coal, 339.
- Ohio to Rock Hill, S. C. Vehicle parts and material, 583.
- Ohio River, points south of, to Buffalo, East Buffalo, Black Rock, or North Tonawanda, N. Y., transited and reconsigned to various destinations. Lumber, 31.
- Ohio River, territory north of, from Kentucky mines. Bituminous coal, 187.
- Ohio River, territory north of, to and from Omaha, Nebr. Summer excursion fares, 255.
- Ohio River crossings to Rock Hill, S. C. Vehicle parts and material, 583.
- Ohio River crossings from southern blast furnaces. Pig iron, 576.
- Oklahoma from Kansas. Apples, 198.
- Oklahoma to Missouri, Illinois, Tennessee, Arkansas, Louisiana, and Wisconsin. Crosties, 73.
- Oklahoma from Oregon, California, and Nevada. Potatoes and onions; dunnage allowances, 334.
- Oklahoma from Plasterco, Tex. Cement plaster, 293.
- Oklahoma from Rapson, Colo. Bituminous nut coal, 164.
- Oklahoma to St. Louis, Mo., via Coffeyville, Kans. Gasoline, 281.
- Omaha, Nebr., from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).
- Omaha, Nebr., to and from territory east of Mississippi and north of Ohio and Potomac rivers, and Canada. Summer excursion fares, 255.
- Ona, Fla., to Murfreesboro, Tullahoma, and McMinnville, Tenn. Citrus fruits, 481.
- Opelousas, La., to New Orleans, La., for export and interstate movement. Cotton, 527.
- Oregon to California, Arizona, New Mexico, Colorado, Texas, Kansas, Oklahoma, Missouri, and Illinois. Potatoes and onions; dunnage allowances, 334.
- Oregon from Colorado common points. Class rates, 439 (462).
- Oregon from Portland, Ore. Salt, 169.
- Oregon to various destinations. Fresh fruits, vegetables, and fish, 266.
- Otsego, Mich., to trunk line and c. f. a. territories. Paper boards, 84 (96).
- Oxford, N. C., to Rock Hill, S. C. Vehicle wheels, 583.
- Pacific coast destinations from Lockland, Ohio. Expansion paving joints and prepared roofing, 484.
- Pacific coast territory from Sand Springs, Okla. Glass fruit jars and jelly glasses, 287.
- Paint Rock, N. C., to Ridgefield Park, N. J. Lumber, 28.
- Patton Switch, Ala., to interstate destinations. Lumber, 159.



- Pennsylvania to Carolina territory, milled at Virginia points. Grain, 63.  
 Pennsylvania to Little Rock, Ark. Cotton piece goods, 18.  
 Pennsylvania from Navarro, Pa. Cement, 387 (388).  
 Pennsylvania to Niles Center, Ill. Bituminous coal, 339.  
 Pennsylvania from North Carolina and South Carolina. Lumber, 28.  
 Pennsylvania to Rock Hill, S. C. Vehicle parts and material, 583.  
 Pennsylvania to and from various points. Cement and merchandise, 387.  
 Pennsylvania from Wyoming, Lehigh, and Schuylkill regions, Pa. Anthracite coal, 62.  
 Pensacola, Fla., to North Birmingham, Ala. Nitrate of soda, 391.  
 Peoria, Ill., from Kansas, Nebraska, Wyoming, South Dakota, Montana, and Colorado, reconsigned at Kansas City, Mo. Hay, 408.  
 Philadelphia, Pa., from Carteret, N. J. Acid phosphate, 550.  
 Philadelphia, Pa., to Little Rock, Ark. Cotton piece goods, 18.  
 Philadelphia, Pa., to New Jersey. Brewers' wet grain, 317.  
 Philadelphia, Pa., to official classification territory. Building and roofing paper, and prepared roofing, 84 (96).  
 Philadelphia, Pa., from Ranger, N. C. Lumber, 28.  
 Philadelphia, Pa., to Rock Hill, S. C. Vehicle springs and carriage and buggy axles, 583 (585).  
 Philadelphia, Pa., from western states. Flour, 403.  
 Pittsburgh, Pa., to Jersey City, N. J. Horses, 552.  
 Pittsburgh, Pa., to Niles Center, Ill. Bituminous coal, 339.  
 Pittsburgh, Pa., to Rock Hill, S. C. Bar iron, 583.  
 Plantersville, Conn., to Rock Hill, S. C. Bolts, nuts, and vehicle forgings, 583 (592).  
 Plasterco, Tex., to Missouri, Kansas, Oklahoma, Arkansas, Louisiana, Mississippi, Alabama, Colorado, New Mexico, Iowa, and Illinois. Cement plaster, 293.  
 Plasterco, Tex., to Natchez, Miss. Cement plaster, 558 (571).  
 Plevna, Mont., from Mobridge and Aberdeen, S. Dak. Wholesale groceries, 307 (313).  
 Port Arthur, Tex., from New Orleans, La. Lumber and articles, 488.  
 Port Ivory, N. Y., from Lambertville, N. J. Crushed stone, 406.  
 Portland, Oreg., to Nashville, Tenn. Flour, 491.  
 Portland, Oreg., from Richmond, Calif. Liquid petrolatum, 525.  
 Portland, Oreg., to Vancouver, British Columbia. Logging engines, 167.  
 Portland, Oreg., to Washington, Idaho, Montana, and Oregon. Salt, 169.  
 Poteau, Okla., to Dallas, Tex. Glass bottles, 10.  
 Potomac River, territory north of, to and from Omaha, Nebr. Summer excursion fares, 255.  
 Potomac Yard, Va., from Gable, S. C., destined to East Norwood, Ohio. Lumber, 541.  
 Princeton, Ky., to Ohio, Indiana, and Michigan. Bituminous coal, 187.  
 Protection, Kans., from Rapson, Colo. Bituminous nut coal, 164.  
 Providence, Ky., to Ohio, Indiana, and Michigan. Bituminous coal, 187.  
 Provo, Utah, from eastern defined territories. Self-propelling vehicles, 507.  
 Pueblo, Colo., to and from Kansas and Nebraska. Class rates, 439 (449).  
 Pulp, Oreg., from Bryan Mound and Freeport, Tex., and Sulphur Mine, La. Crude sulphur, 176.  
 Ranger, N. C., to Philadelphia, Pa. Lumber, 28.  
 Rapson, Colo., to Protection, Kans., and Norman, Avard, and New Burlington, Okla. Bituminous nut coal, 164.  
 Red Granite, Wis., to Kansas City, Mo. Granite paving blocks, 330.  
 Reno County, Kans., to Oklahoma and Texas. Apples, 198.  
 Rhame, N. Dak., from Mobridge and Aberdeen, S. Dak. Wholesale groceries, 307 (313).  
 Rhode Island to Little Rock, Ark. Cotton piece goods, 18.

- Rice County, Kans., to Oklahoma and Texas. Apples, 198.  
 Richard City, Tenn., to Jennings, La. Portland cement, 517.  
 Richmond, Calif., to Portland, Oreg., and other points. Liquid petrolatum, 525.  
 Richmond, Va., from Houston, Tex. Scrap iron and scrap rails, 22.  
 Ridgefield Park, N. J., from Paint Rock and Waynesville, N. C. Lumber, 28.  
 Roanoke, Ala., to Copperhill, Tenn. Sulphuric acid, 423 (424).  
 Roanoke, Ala., from Milton and Sharon, Pa. New tanks cars, 235.  
 Rock Hill, S. C., from trunk line, New England, and c. f. a. territories, and Ohio River crossings. Vehicle parts and material, 583.  
 Rock Island, Ill., to Mobridge, S. Dak. Wholesale groceries, 307.  
 Round Lake, Tex., from New Orleans, La. Lumber and articles, 488.  
 Ruliff, Tex., from New Orleans, La. Lumber and articles, 488.  
 Sabine, Tex., from New Orleans, La. Lumber and articles, 488.  
 Sabine Pass, Tex., from New Orleans, La. Lumber and articles, 488.  
 Sacramento, Calif., from Gypsum, Utah. Plaster, 433.  
 St. Louis, Mo., from Clifton, Ariz. Empty beer packages, 555.  
 St. Louis, Mo., to Coffeyville and Independence, Kans. Class and commodity rates, 497.  
 St. Louis, Mo., to Illinois, Wisconsin, Minnesota, Missouri, Iowa, South Dakota, and Michigan. Cement, 225 (230).  
 St. Louis, Mo., from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).  
 St. Louis, Mo., from Kansas, Nebraska, Wyoming, South Dakota, Montana, and Colorado, reconsigned at Kansas City, Mo. Hay, 408.  
 St. Louis, Mo., from Missouri, Louisiana, Arkansas, Kansas, Oklahoma, Texas, and Mississippi. Crossties, 73.  
 St. Louis, Mo., to and from New Orleans, Baton Rouge, and Angola, La., and Natchez and Vicksburg, Miss. Class and commodity rates; fourth section, 105 (108).  
 St. Louis, Mo., from Oklahoma, via Coffeyville, Kans. Gasoline, 281.  
 St. Paul, Minn., from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).  
 St. Paul, Minn., from Kansas, Nebraska, Wyoming, South Dakota, Montana, and Colorado, reconsigned at Kansas City, Mo. Hay, 408.  
 St. Paul, Minn., to Mobridge, S. Dak. Wholesale groceries, 307.  
 St. Paul, Minn., from Montana, milled in transit at Great Falls, Mont. Wheat, 151.  
 St. Paul, Minn., from Washington, Oregon, and Idaho. Fresh fruits and vegetables, 266.  
 Salt Lake City, Utah, from eastern defined territories. Self-propelling vehicles, 507.  
 San Antonio, Tex., from Kansas. Apples, 198.  
 San Antonio, Tex., from Laredo, Tex., originating at Monterey, Mexico. Iron and iron articles, 521.  
 San Bernardino, Calif., from Lockland, Ohio. Expansion paving joints and prepared roofing, 484.  
 San Diego, Calif., from Niles, Mich., and Weehawken, N. J. Flat wire braid, 499.  
 San Francisco, Calif., to Dallas, Tex. News print paper, 39.  
 San Francisco, Calif., from Gypsum, Utah. Plaster, 433.  
 San Francisco, Calif., from Lockland, Ohio. Expansion paving joints and prepared roofing, 484.  
 San Jose, Calif., from Gypsum, Utah. Plaster, 433 (435).  
 Sand Springs, Okla., to Pacific coast territory. Glass fruit jars and jelly glasses, 287.  
 Santa Clara, Calif., from Gypsum, Utah. Plaster, 433 (435).  
 Savannah, Ga., from Milton and Sharon, Pa. New tank cars, 235.  
 Schuylkill region, Pa., to New York, New Jersey, and Pennsylvania. Anthracite coal, 62.

- Scranton, Pa., to Rock Hill, S. C. Vehicle springs and axles, 583 (592).  
 Seattle, Wash., from Montana, milled in transit at Great Falls, Mont. Wheat, 151.  
 Seattle, Wash., from New Orleans, La., for export to Vladivostok, Siberia. Compressed cotton, 323.  
 Seattle, Wash., to various destinations. Fresh fish, 266.  
 Sebree, Idaho, from Portland, Oreg. Salt, 169 (171).  
 Sedgwick County, Kans., to Oklahoma and Texas. Apples, 198.  
 Seffner, Fla., to McMinnville, Tenn. Citrus fruits, 481.  
 Sharon, Pa., to the southeast. New tank cars, 235.  
 Shawmut, Ark., to and from Natchez, Miss. Class and commodity rates, 105.  
 Shenandoah, Pa., from Delaware, Maryland, and Virginia. Mine props, 249.  
 Shreveport, La., to Vicksburg, Miss. Cotton seed, 148.  
 Silverton, Oreg., to Nashville, Tenn. Flour, 491.  
 Sinnemahoning, Pa., to South Amboy, N. J. Dynamite; dunnage, 173.  
 Sioux City, Iowa, from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).  
 Sioux Falls, S. Dak., from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).  
 Smithton, Ark., to and from Natchez, Miss. Class and commodity rates, 105.  
 Snyders, Wis., to M., St. P. & S. S. M. Ry. points. Lumber and forest products; divisions, 7.  
 South Amboy, N. J., from Sinnemahoning and Emporium, Pa. Dynamite; dunnage, 173.  
 South Bend, Ind., from Kentucky mines. Bituminous coal, 187.  
 South Bethlehem, Pa., from Waynesville, N. C. Lumber, 28.  
 South Carolina from Milton and Sharon, Pa., and Warren, Ohio. New tank cars, 235.  
 South Carolina to New York, New Jersey, and Pennsylvania. Lumber, 28.  
 South Chicago, Ill., to Twin Falls, Idaho. Steel rails, 400.  
 South Dakota from Colorado common points. Class rates, 439 (462).  
 South Dakota from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).  
 South Dakota to Kansas City, Mo., reconsigned to Chicago, Peoria, and East St. Louis, Ill., Keokuk, Iowa, St. Louis, Mo., St. Paul, Minneapolis, and Duluth, Minn., and Ashland, Wis. Hay, 408.  
 Southeastern points from Milton and Sharon, Pa., and Warren, Ohio. New tank cars, 235.  
 Southern blast furnaces to Ohio River crossings, c. f. a., trunk line, and New England territories. Pig iron, 576.  
 Southern classification territory. Cotton belting; ratings, 15.  
 Southern states from Navarro, Pa. Cement, 387 (388).  
 Spokane, Wash., from Portland, Oreg. Salt, 169 (171).  
 Spring Hill, Ia., to Johnstown, Pa. Yellow-pine lumber, 486.  
 Springfield, N. J., from Laquin, Pa. Lumber, 21.  
 Spur 325, Minn., to Morrison, Ill., via Minnesota Transfer, Minn. Cedar posts, 495.  
 Stafford County, Kans., to Oklahoma and Texas. Apples, 198.  
 Staunton, Va., from c. f. a. territory, Pennsylvania, Maryland, West Virginia, and Virginia, milled and the product shipped to Carolina territory. Grain, 63.  
 Stockton, Calif., from Gypsum, Utah. Plaster, 433 (435).  
 Sulphur Mine, La., to Pulp and Lebanon, Oreg., and Camas, Wash. Crude sulphur, 176.  
 Sumner County, Kans., to Oklahoma and Texas. Apples, 198.  
 Sunlight, Ala., to interstate destinations. Lumber, 159.  
 Tacoma, Wash., to Chicago, Ill., originating in China. Dried egg albumen, 361.

- Tacoma, Wash., from Lockland, Ohio. Expansion paving joints and prepared roofing, 484.
- Tacoma, Wash., from Montana, milled in transit at Great Falls, Mont. Wheat, 151.
- Tacoma, Wash., from Waterloo, Iowa. Concrete mixers, 351.
- Talladega, Ala., to Copperhill, Tenn. Sulphuric acid, 423 (424).
- Tampa, Fla., to Murfreesboro, Tenn. Citrus fruits, 481.
- Tennessee from Florida. Citrus fruits, 481.
- Tennessee from Louisiana, Arkansas, Kansas, Oklahoma, Texas, Missouri, and Mississippi. Crossties, 73.
- Tennessee from Milton and Sharon, Pa., and Warren, Ohio. New tank cars, 235.
- Tennessee to Ohio River crossings and c. f. a. territory. Pig iron, 576.
- Texarkana, Tex.-Ark., from Kansas. Apples, 198.
- Texas to and from Colorado common points. Class rates, 439 (453, 462).
- Texas from Kansas. Apples, 198.
- Texas to Missouri, Illinois, Tennessee, Arkansas, Louisiana, and Wisconsin. Crossties, 73.
- Texas to and from Natchez, Miss. Class rates, 558.
- Texas to Natchez, Miss. Cattle, horses, mules, sheep, hogs, salt, and cement plaster, 558 (570, 571).
- Texas from New Orleans, La. Lumber and articles, 488.
- Texas from New Orleans, La. Sugar, 23.
- Texas from Oregon, California, and Nevada. Potatoes and onions; dunnage allowance, 334.
- Thonotosassa, Fla., to Murfreesboro, Tullahoma, and McMinnville, Tenn. Citrus fruits, 481.
- Three Rivers, Mich., to trunk line territory. Paper boards, 84 (96).
- Tidewater points from Navarro, Pa. Cement, 387 (388).
- Toledo, Ohio, from Miami, W. Va. Crude oil, 12.
- Toledo, Ohio, to Salt Lake City, Ogden, and Provo, Utah. Self-propelling vehicles, 507.
- Toms Brook, Va., from c. f. a. territory, Pennsylvania, Maryland, West Virginia, and Virginia, milled and the product shipped to Carolina territory. Grain, 63.
- Topeka, Kans., to Texarkana, Tex.-Ark. Apples, 198.
- Transcontinental zone. Allowances for use of refrigerator cars for transportation of fresh meat and packing-house products, 240.
- Trenton, N. J., to Rock Hill, S. C. Carriage cloth and rubber goods, 583 (585).
- Trinidad, Colo., to and from Kansas and Nebraska. Class rates, 439 (449).
- Troy, Ala., to Copperhill, Tenn. Sulphuric acid, 423 (424).
- Troy, Ala., from Milton and Sharon, Pa. New tank cars, 235.
- Trunk line territory from southern blast furnaces. Pig iron, 576.
- Trunk line territory to and from c. f. a. and New England territories. Building and roofing paper, 84.
- Trunk line territory to Rock Hill, S. C. Vehicle parts and material, 583.
- Tuckerton, N. J., from Barnegat, N. J. Company material, 319.
- Tullahoma, Tenn., from Florida. Citrus fruits, 481.
- Tullahoma, Tenn., to Rock Hill, S. C. Vehicle parts and material, 583.
- Twin Falls, Idaho. Storage charges on steel rails, 400.
- Tyrone-Piedmont group to trunk line and New England territories. Building and roofing paper and prepared roofing, 84 (92, 103).
- Utah common points from eastern defined territory. Self-propelling vehicles, 507.
- Utah from Colorado common points. Class rates, 439 (462).
- Utica, Ill., to Illinois, Wisconsin, Minnesota, Missouri, Nebraska, Iowa, South Dakota and Michigan. Cement, 225 (232).

- Valdosta, Ga., to Copperhill, Tenn. Sulphuric acid, 423 (424).  
 Valley District, Kans., to Oklahoma and Texas. Apples, 198.  
 Vancouver, British Columbia, from Portland, Oreg. Logging engines, 167.  
 Vergennes, Vt., to Boston, Mass. Milk, 269.  
 Vicksburg, Miss., to and from Kansas City and St. Louis, Mo., and Memphis, Tenn. Class and commodity rates; fourth section, 105 (108).  
 Vicksburg, Miss., from Shreveport, La. Cotton, 148.  
 Villa Platte, La., to New Orleans, La., for export and interstate movement. Cotton, 527.  
 Virginia to Carolina territory, milled at Virginia points. Grain, 63.  
 Virginia from c. f. a. territory, Pennsylvania, Maryland, West Virginia, and Virginia, milled and the product shipped to Carolina territory. Grain, 63.  
 Virginia to Shenandoah, Pa. Mine props, 249.  
 Vladivostok, Siberia, from New Orleans, La., exported via Seattle, Wash. Compressed cotton, 323.  
 Waco, Tex., from Kansas. Apples, 198.  
 Wagon Works, Ohio, to Salt Lake City, Ogden, and Provo, Utah. Self-propelling vehicles, 507.  
 Wallaceburg, Ontario, to New York and New Jersey. Dried beet pulp, 145.  
 Warren, Ark., to and from Natchez, Miss. Class and commodity rates, 105.  
 Warren, Ohio, to the southeast. New tank cars, 235.  
 Washington from Colorado common points. Class rates, 439 (462).  
 Washington from Portland, Oreg. Salt, 169.  
 Washington to various destinations. Fresh fruits, vegetables, and fish, 266.  
 Washington Western Railway points to interstate points. Lumber and forest products, 42.  
 Waterloo, Iowa, to Tacoma, Wash. Concrete mixers, 351.  
 Waukesha, Wis. Stone and fuel wood; switching charges, 503.  
 Wausau, Wis., from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).  
 Waynesville, N. C., to New York, New Jersey, and Pennsylvania. Lumber, 23.  
 Weaversville, Pa., to and from various points. Merchandise, 387.  
 Weehawken, N. J., to San Diego, Calif. Flat wire braid, 499.  
 West Albany, N. Y., from Dillsboro, N. C. Lumber, 28.  
 West Port Arthur, Tex., from New Orleans, La. Lumber and articles, 483.  
 West Virginia to Carolina territory, milled at Virginia points. Grain, 63.  
 West Virginia to Niles Center, Ill. Bituminous coal, 339.  
 West Virginia to Rock Hill, S. C. Vehicle parts and material, 583.  
 Western classification territory. Cotton belting; ratings, 15.  
 Western states to Philadelphia, Pa. Flour, 403.  
 Westville, S. C., to Bath Beach, N. Y. Flour, 493.  
 Wheeling, W. Va., to Rock Hill, S. C. Vehicle springs and axles, 583 (592).  
 White Pigeon, Mich., to trunk line territory. Paper boards, 84, (96).  
 Wichita, Kans., to Texarkana, Tex.-Ark. Apples, 198.  
 Williamsport, Md., to Rock Hill, S. C. Leather, 583 (592).  
 Wilkes-Barre, Pa., to Rock Hill, S. C. Vehicle springs and axles, 583 (592).  
 Wisconsin from Indiana, Illinois, Iowa, Missouri, Minnesota, and Kansas. Cement, 225 (230).  
 Wisconsin from Louisiana, Arkansas, Kansas, Oklahoma, Texas, Missouri, and Mississippi. Crossties, 73.  
 Wisconsin to M., St. P. & S. Ste. M. Ry. points. Lumber and forest products, 7.  
 Wyandotte County, Kans., to Oklahoma and Texas. Apples, 198.

Wyeth, Oreg., from Portland, Oreg. Salt, 169 (171).

Wyoming from Colorado common points. Class rates, 439 (462).

Wyoming to Kansas City, Mo., reconsigned to Chicago, Peoria, and East St. Louis, Ill., Keokuk, Iowa, St. Louis, Mo., St. Paul, Minneapolis, and Duluth, Minn., and Ashland, Wis. Hay, 408.

Wyoming region, Pa., to New York, New Jersey, and Pennsylvania. Anthracite coal, 62.

Yakima, Wash., to various destinations. Fresh fruits and vegetables, 266.

52 I. C. C.



## INDEX DIGEST.

[The number in parentheses following citation indicates where paragraph occurs or subject is considered.]

### ABSORPTION.

Increased rates on interstate traffic to and from points on the Northampton & Bath R. R., resulting from the cancellation of absorption of N. & B. charges, found unreasonable to extent they exceeded those maintained to and from the junction points. Reparation awarded. *Atlas Portland Cement Co. v. N. & B. R. R. Co.*, 387.

### ACT TO REGULATE COMMERCE.

Specifically requires carriers subject thereto to issue bills of lading. *Bills of Lading*, 671 (686).

### ADDITIONAL SERVICE.

Loading and unloading live stock is a separate and distinct service not included in the transportation rate. *Live Stock Loading and Unloading Charges*, 209 (223).

For all special services apart from conveyance, the carriers may properly make a reasonable charge. *Id.* (223).

### ADJACENT FOREIGN COUNTRY. *See also* NONADJACENT FOREIGN COUNTRY.

Carrier is bound to issue bills of lading on shipments destined "from a point in the United States to a point in an adjacent foreign country" but law does not require that such a bill shall be an "export" bill. *Bills of Lading*, 671 (732, 734).

### ADJUSTMENT OF RATES. *See also* RELATIVE ADJUSTMENT.

Carriers in official classification territory seeking by fifteenth section application to readjust to the sixth-class basis carload rates throughout the territory and between c. f. a. and trunk line territory and New England territory, *Held*, Adjustment proposed not justified. Maximum rates prescribed. *Building and Roofing Paper and Paper Board Rates*, 84 (102).

Rates from the Tyrone-Piedmont group of paper mills should be on the Williamsport-Cumberland basis. *Id.* (92, 103).

A commodity rate adjustment as a whole should have due regard for the corresponding class rate adjustment. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (122).

Rates on fresh apples from the northeastern and valley districts of Kansas, to Oklahoma and Texas, not shown unreasonable or prejudicial to Kansas or preferential of either Arkansas or Colorado. *Public Utilities Commission of Kansas v. A. & S. Ry. Co.*, 198 (206, 208).

Inequalities between the Kansas-Texas adjustment and the rates maintained for distances over 600 miles from New Mexico to Texas, carriers should promptly remove. *Id.* (208).

The Commission has power in a proper case to order carriers serving Kansas City, Mo., which do not serve Omaha, Nebr., to cease and desist from continuing a rate adjustment which unduly prejudices Omaha. *Commercial Club of Omaha v. B. & O. R. R. Co.*, 255 (264).



## ADJUSTMENT OF RATES—Continued.

The present adjustment having removed the cause of complaint, and the Director General of Railroads not having been made a party defendant, complaint attacking rate on sugar from New Orleans, La., to Harrodsburg, Ky., dismissed. *Curry Grocery Co. (Inc.) v. S. Ry. Co.*, 373.

While as a general rule awards of reparation will not be made where the rates affected have been the subject of a general readjustment, this does not apply where the rates charged exceed those found reasonable by such substantial amounts as to be intrinsically unreasonable under any adjustment. *King & Co. v. N., C. & St. L. Ry.*, 481 (483).

Transcontinental carriers may adjust their rates to permit the freest competition in common markets between Pacific coast lumber and lumber products and the same commodities produced elsewhere, but they may not, by means of inequalities in their rates, confine the production of millwork from Pacific coast lumber to the Pacific coast. *Rates on Lumber and Lumber Products*, 598 (618).

## ADMINISTRATIVE BODY.

Functions of the Commission are administrative and quasi-judicial. *Bills of Lading*, 671 (685).

## ADMINISTRATIVE RULING.

Conference Ruling 70, cited. *Sun Co. v. T. & O. C. Ry. Co.*, 12.

Conference Ruling 225, quoted. *Tuckerton R. R. Co. v. P. R. R. Co.*, 319 (321).

Conference Ruling 324, quoted. *Tuckerton R. R. Co. v. P. R. R. Co.*, 319 (321).

Conference Ruling 378, cited. *Bills of Lading*, 671 (727).

Conference Ruling 473, cited. *Perrine v. O. S. L. R. R. Co.*, 400 (401).

Conference Ruling 474-c, quoted in part. *Doyle v. L. & N. W. R. Co.*, 327.

Rule 5 (b) of Tariff Circular 18-A, cited. *Aetna Explosives Co. v. A. G. S. R. R. Co.*, 235 (238); *King & Co. v. N., C. & St. L. Ry.*, 481 (482); *Alkire-Smith Auto Co. v. A., T. & S. F. Ry. Co.*, 507 (509).

Rule 10 (c) and 10 (e) of Tariff Circular 18-A, cited. *Live Stock Loading and Unloading Charges*, 209 (222).

Rule 77 of Tariff Circular 18-A, cited. *Southwestern Paper Co. v. C., R. I. & P. Ry. Co.*, 39 (40); *Refinite Co. v. C. & N. W. Ry. Co.*, 548; *Rock Hill Buggy Co. (Inc.) v. S. Ry. Co.*, 583 (591).

ADVANCE IN RATES. *See also* APPLICATION; PASSENGER FARES.

## In General:

Increased rates on interstate traffic to and from points on the Northampton & Bath R. R., resulting from the cancellation of absorption of N. & B. charges, found unreasonable to extent they exceeded those maintained to and from the junction points. Reparation awarded. *Atlas Portland Cement Co. v. N. & B. R. R. Co.*, 387.

Coal, bituminous: On bituminous coal to Niles Center, Ill., from interstate points, each factor of the combination rate based on Chicago, Ill., was increased 15 per cent by order of Director General. *Held*: Double increase not justified and through rate unreasonable to extent it exceeds by more than 15 cents the rates to Chicago. Reparation denied. *Stielow Bros. Co. v. C. & N. W. Ry. Co.*, 339 (343).

Crossties: Increased rates on, to Chicago, Ill., from St. Louis and East St. Louis, when the latter are used as components of through rates on interstate shipments, found not justified and to be unduly preferential of Thebes, Ill. *Kettle River Co. v. M. P. Ry. Co.*, 73 (83).

**ADVANCE IN RATES—Continued.**

**Express Rates:** Rates on fresh fruits and vegetables from Washington, Oregon, and Idaho and on fish from Washington and Oregon, to all other points on defendant's lines, increased following *Proposed Increase in Express Rates*, 50 I. C. C., 385, found justified. *Public Service Commission of Washington v. American Ry. Express Co.*, 266.

**Hope:** Proposed increased rates on hops from Oregon, Washington and California points were suspended as to Oregon and Washington points only. Suspended rates subsequently found justified. *Held:* During period of suspension rates from California points found unduly preferential of Oregon and Washington points. Reparation awarded. *Horst Co. v. S. P. Co.*, 356.

**Lumber products:** Lower rates prevail on such articles as logs, ties, bark, box material, and box shooks than on lumber, and the Commission's findings herein do not justify increases in rates on these articles. *Rates on Lumber and Lumber Products*, 598 (624).

**Mine props:** Upon reconsideration, *Held:* Maximum rates 1 cent higher than prescribed in original report, 50 I. C. C., 327, on mine props from points in Delaware, Maryland, and Virginia, to Shenandoah, Pa., and points taking same rates, prescribed. *Virginia Pine Timber Co. v. N. Y., P. & N. R. R. Co.* 249.

**News print paper:** Rates on, from Niagara Falls, N. Y., to Fort Smith, Ark., increased in accordance with permission granted in *The Five Per Cent Case*, 32 I. C. C., 325, 331, found justified. *International Paper Co. v. L. E. & W. R. R. Co.*, 514 (516).

**Switching:** Switching charges between complainant's plant and defendant's connection with the C. & N. W., in Waukesha, Wis., increased from flat charge per car to charge upon a weight basis due to advance in costs, found justified. *Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co.*, 503.

**ADVANTAGES AND DISADVANTAGES.** *See* LOCATION.

**AGGREGATE OF INTERMEDIATES.** *See* THROUGH AND LOCAL.

**AGREEMENT.** *See* AVERAGE AGREEMENT.

**ALLOWANCES.** *See also* DIVISIONS.

On complaint alleging less than reasonable allowances for use of privately owned refrigerator cars to transport fresh meat and packing-house products within the territory west of El Paso, Tex., Albuquerque, N. Mex., and Salt Lake City and Ogden, Utah, *Held:* Allowances should be 1 cent a mile on the loaded and empty movements. *Armour & Co. v. E. P. & S. W. Co.*, 240.

**Paid by carriers in transcontinental zone for loaded and empty movements of privately owned refrigerator cars compared with that regarded as proper throughout the remainder of the United States.** *Id.* (241).

**The right to furnish equipment is a very different thing from that of making allowances less than reasonable to shippers who are compelled to furnish their own cars, for the purpose of discouraging the use thereof.** *Id.* (245).

**Discontinuance of an allowance for reduction in weight due to leakage and evaporation of moisture from brewers' wet grain in transit, found justified.** *Farmers' Feed Co. v. E. R. R. Co.*, 317.

**Following *Dunnage Allowances*, 30 I. C. C., 538, withdrawal of allowance for free transportation of materials used in double-decking cars in connection with shipments of potatoes and onions, found justified.** *California Wholesale Potato Dealers' Asso. v. A. E. R. R. Co.*, 334.

**The theory of paying allowance for empty movement presupposes a loaded movement.** *Chanute Refining Co. v. A., T. & S. F. Ry. Co.*, 593 (595).

**ALTERNATIVE RATES.**

Rates legally applicable on news print paper from Niagara Falls, N. Y., to Little Rock and Fort Smith, Ark., except when moving via Lehigh Valley as initial carrier, exceeded alternative rates in effect prior to movement and subsequently restored. Reparation awarded. *International Paper Co. v. L. E. & W. R. R. Co.*, 514.

**AMENDMENT TO COMPLAINT.**

Informal complaint filed by complainant on its own behalf within statutory period. Formal complaints filed by complainant as assignee for various firms and individuals, consignees of the shipments who paid the freight charges. Assignments in favor of complainant were executed after expiration of the statutory period. Amendments were offered at the hearing adding names of the various consignees as complainants. *Held*: Claims barred. *Horst Co. v. S. P. Co.*, 356 (358).

**ANALOGOUS ARTICLES. See COMPARATIVE RATES; LIKE KINDS OF TRAFFIC. APPENDIX.**

Description and present and proposed basis of rates in c. f. a., trunk line, and official classification territories. Building and Roofing Paper and Paper Board Rates, 84 (104).

1. Class rate scales approved by Commission in *Shreveport* and other cases. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (119, 131, 133, 134).
2. Comparison of class rates from Natchez, Miss., and other points to stations in Louisiana and Arkansas. *Id.* (109, 135-136).
3. Operation of steamboats and other water craft in Louisiana for year ended June 30, 1915. *Id.* (116, 137-138).
4. Proposed formula for constructing commodity rates to Texarkana group from lower Mississippi River crossings and Memphis territory. *Id.* (114, 139).
5. Statement showing Mississippi River crossing charges proposed by carriers to apply at Natchez, as compared with bridge tolls suggested by carriers to apply on Memphis traffic for same distance. *Id.* (125-140.)
6. Comparison of statistics taken from Statistics of Railways in the United States for the fiscal year ended June 30, 1915. *Id.* (126-141).
7. Comparative statement of first-class rates proposed by Vicksburg, Shreveport & Pacific Ry. to Shreveport triangle and to Texarkana group. *Id.* (113, 142).
8. Illustration of distance class rates in effect in the state of Louisiana. *Id.* (109, 143).
1. Table showing predominant rate relationship to lumber, of products listed under "Agricultural Implement and Vehicle Material;" rate relationship proposed by carriers; and data as to value of articles listed. Rates on Lumber and Lumber Products, 598 (608, 656-659).
2. Statement showing range of values of lumber and lumber products. *Id.* (608, 615, 660).
3. Statement of car loading and value of millwork. *Id.* (609, 661-663.)
4. Statement and table showing value and car loading of veneer and built-up wood. *Id.* (613, 664-665).
- A. Proposed uniform straight bill of lading by carriers and shippers. Bills of Lading, 671 (following page 740).
- B. Form of domestic (straight) bill of lading prescribed by the Commission. *Id.* (following page 740).
- C. Form of uniform export bill of lading proposed by carriers and shippers. *Id.* (following page 740).
- D. Uniform export bill of lading prescribed by the Commission. *Id.* (following page 740).

## APPLICATION.

## Fifteenth section:

Carriers in official classification territory seeking to readjust to the sixth-class basis carload rates on building and roofing paper and paper boards throughout the territory and between c. f. a. and trunk line territories and New England territory, *Held*, Adjustment proposed not justified. Maximum rates prescribed. Building and Roofing Paper and Paper Board Rates, 84 (102).

Applications of Louisville & Southern Indiana Traction Co. and Louisville & Northern Ry. & Lighting Co., for increased passenger fares between Louisville, Ky., and Jeffersonville, Ind., and New Albany, Ind., respectively, granted to extent they do not exceed 7 cents. Louisville Passenger Fares, 366.

## ARBITRARIES.

Maintenance of different arbitraries over Maine junctions to points in New England territory from trunk line territory than from c. f. a. territory is unduly prejudicial and preferential and should be adjusted so that same arbitraries should be added to make through rates on shipments from points in both territories. Building and Roofing Paper and Paper Board Rates, 84 (103).

From northern New York, rates may be made by adding existing arbitraries to the Buffalo, N. Y., rates herein found reasonable. *Id.* (103).

## ASSIGNMENTS.

Informal complaint filed by complainant on its own behalf within statutory period. Formal complaints filed by complainant as assignee for various firms and individuals, consignees of the shipments who paid the freight charges. Assignments in favor of complainant were executed after expiration of the statutory period. Amendments were offered at the hearing adding names of various consignees as complainants. *Held*: Claims barred. Horst Co. v. S. P. Co., 356 (358).

## AVERAGE AGREEMENT.

Demurrage rules applicable in 1915 and 1916 on shipments of lake cargo coal held at ports on Lake Erie, awaiting transshipment by water, not shown unreasonable because they limited the period for averaging debits and credits to less than the entire season of navigation. Cabin Creek Consolidated Coal Co. v. C., H. & D. Ry. Co., 181 (183).

## AVERAGE HAUL.

Cement: Not over 250 miles. Western Cement Rates, 225 (234).

## AVERAGES.

Average purchase price, value per car, and weight per carload, of portable and nonportable lamps, shown. Larkin Co. v. E. R. R. Co., 413 (417).

BACK HAUL. *See OFF-LINE CHARGES.*

## BASIS OF RATES.

The normal basis for constructing summer excursion fares between Missouri River territory and the east is double the local fares from points of origin to the basing points. Commercial Club of Omaha v. B. & O. R. R. Co., 255 (259).

## BIG SANDY &amp; CUMBERLAND R. R. CO.

Joint rates and divisions between, and Norfolk & Western Ry., in effect at time of hearing, not shown to have been unduly preferential or otherwise unlawful. Big Sandy & Cumberland R. R. Co., 347.

History of. *Id.* (347-350).

BILL OF LADING. *See also EXPORT BILL OF LADING.*

Shippers of eggs should be required to note on the bill of lading the character of the shipment, whether current receipts, rehandling current receipts, rehandled and repacked current receipts, or storage packed. National Poultry, Butter & Egg Assn. v. N. Y. C. R. R. Co., 47 (60).

## BILL OF LADING—Continued.

Important decisions of the Supreme Court during period following the enactment of the Carmack amendment in 1906 down to enactment of the first Cummins amendment in 1915, cited. Bills of Lading, 671 (677).

Functions of, stated. *Id.* (681).

That part of, which constituted a receipt may be treated as distinct from the part incorporating the contractual terms. *Id.* (681).

Evidence necessary to vary terms of. *Id.* (681).

Shipper presumed to know and accept conditions of, and signature not necessary. *Id.* (681).

Ordinarily not negotiable but frequently made so. *Id.* (681).

Extent of Commission's jurisdiction governing terms and conditions that carriers may write into. *Id.* (685).

Duty of common carriers under amendment to section 1, effective June 18, 1910, governing bills of lading. *Id.* (686).

Jurisdiction of Commission over. *Id.* (686).

The act specifically requires carriers subject thereto to issue. *Id.* (686).

"Straight" and "order" defined. *Id.* (690).

Purpose of Pomerene Act in regard to. *Id.* (690).

Minor changes suggested on face of proposed domestic bill of lading approved. *Id.* (691).

Section 1, clause 2, differences in elevator weights. "Differences in the weights of grain seed or other commodities caused by \* \* \* or discrepancies in elevator weights" impart unlawful and unreasonable meaning into, and should be stricken from uniform bill. *Id.* (695).

Section 1, clause 3, liability of carrier as insurer and warehouseman for loss, damage, or delay caused by fire. Proposed clause making carriers' liability dependent upon sending or giving of notice of arrival and not upon delivery or tender of delivery should be removed and clause changed in manner herein provided. *Id.* (695, 702).

Section 1, clause 4: Liability of carrier for property while stopped and held in transit, found unreasonable but should be amended so as to provide that carriers shall not be liable for "delay caused by riots or strikes." *Id.* (705).

Section 1, clause 5, transportation in open cars. Proposed rule limiting carriers' liability on low grade, heavy, or bulky articles, found too broad in favor of carriers, and invalid to extent it falls within the provisions of the Cummins amendment in seeking to exempt the carriers from the liabilities with which it would be charged under the common law. *Id.* (706-708).

Section 2, clause 3, measure of carriers' liability for loss and damage. Proposed rule limiting carriers' liability when property shipped under rates dependent upon declared or agreed values found unlawful and should be eliminated. *Id.* (708-712).

Section 4, clause 1, general liability of carrier as warehouseman, after 48 hours. Proposed rule to relieve the carriers from liability for safe keeping of goods when sent to public or licensed warehouse after expiration of free time, not approved, and rule in lieu thereof suggested by the Commission. *Id.* (712-713).

Section 4, clause 9, receipt or delivery of property at private or other sidings, wharves, landings, etc. Provisions of, to relieve carrier of all liability, except for its own negligence for loss and damage to property occurring at any time when property is not in car actually attached to a train or in or on a vessel found unreasonable. *Id.* (714-717).

Section 4, proposed new provision for notice to consignor and consignee in the case of loss resulting in nondelivery and to the consignor in the case of goods refused or unclaimed at destination, disapproved. *Id.* (717-720).

**BILL OF LADING—Continued.**

Section 7, clause 2, liability for payment of freight charges. Suggestion of shippers governing, laying upon carriers duties or obligations extraneous to the service of transportation, disapproved. *Id.* (721-722).

Section 9, clauses 1, 2, 3, 4, 5, and 6, limitation of liability of water carriers. Proposed rule exempting from liability carriers by water when participating in transportation subject to the act would be in contravention of the Cummins amendment, and is therefore null and void. Rule disapproved. *Id.* (723-726).

Carriers not required to issue through export bill of lading to foreign destination binding jointly upon them and subjecting them to same limitation the law imposes in respect of the issuance of domestic bills of lading applicable on interstate traffic and traffic destined to adjacent foreign countries. *Id.* (735).

Forms of uniform bills of lading proposed by carriers and shippers and those approved by the Commission. *Id.* (following page 740).

**BILLS OF LADING ACT.**

Purpose of Pomerene Act to enhance negotiability feature of bills of lading and to afford greater protection to those who handle and deal in such bills in the course of commercial transactions. Bills of Lading, 671 (690).

Section 21 of, quoted. *Id.* (693).

Contains no provision respecting transition from liability of a common carrier to that of a warehouseman. *Id.* (696).

**BLANKET RATES. See also GROUP RATES.**

Distance from lower Mississippi River crossings to the border of the Shreveport triangle being relatively short as compared with distances within the Shreveport triangle, further maintenance of blanket rates between lower Mississippi River crossings and points in Louisiana west of the Mississippi River on the one hand and the triangle on the other hand disapproved. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (128).

**BOAT LINES. See also WATER CARRIERS.**

Operation of steamboats and other water craft in Louisiana for year ended June 30, 1915, Appendix 3. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (116, 137-138).

**BOTH DIRECTIONS.**

Class rates between Denver, Colo., and points in Texas found improperly aligned and no justification for maintenance of different bases northbound and southbound. *Public Utilities Commission of Colorado v. A., T. & S. F. Ry. Co.*, 439 (459).

**BRANCH LINE POINTS.**

Combination rates on lumber from Patton Switch, Sunlight, and Ford Switch, Ala., to interstate destinations, found unduly prejudicial to extent they exceeded rates maintained from Manchester, Ala., from which point the main line basis of rates apply. *Cleveland Lumber Co. v. A. C. R. R. Co.*, 159.

Rates on cotton from points on defendants Eunice branch in Louisiana to New Orleans, La., for export or interstate movement, not found unreasonable or unduly prejudicial as compared with rates from Opelousas, La., which point is entitled to a somewhat lower rate due to its location. *Haas & Co. v. T. & P. Ry. Co.*, 527.

On steel relay rails from Gueydan, La., a branch line point, to East St. Louis, Ill., no rate specifically applicable. *Held*: Rate charged found unreasonable to extent it exceeded combination rate applicable to points beyond Baton Rouge, plus rate from main line points west of Midland to New Orleans. Reparation awarded. *Zelnicker Supply Co. v. L. W. R. R. Co.*, 543.

**BRANCH LINE POINTS**—Continued.

During specific periods rates on lumber from Miley, S. C., a branch line point, to Norfolk, Va., and North Philadelphia and Chester, Pa., more than 2 cents over Hampton, S. C., not shown unreasonable, inasmuch as rates from Miley not fixed with any relation to rates from Hampton. *Bright-Brooks Lumber Co. v. H. & B. R. R. & L. Co.*, 545.

**BREAKAGE.**

Main damage to eggs in transit is due to coupling, switching, application of air brakes, wrecks, etc., and while these shocks are not of a kind to produce any noticeable exterior damage to the case, they are sufficient to break a portion of the eggs, even when carefully packed. *National Poultry, Butter & Egg Asso. v. N. Y. C. R. R. Co.*, 47 (50).

**BRIDGE TOLLS.** *See RIVER CROSSINGS.***BURDEN OF PROOF.**

On interstate traffic to and from points on the Northampton & Bath R. R., complainant's contention that the burden is upon the carriers to prove that increased through rates resulting from the cancellation of absorption of N. & B. charges were just and reasonable, sustained. *Atlas Portland Cement Co. v. N. & B. R. R. Co.*, 387 (389).

To show what is correct weight should depend upon which of the parties, carrier or shipper, is responsible for the accuracy of the weights. *Bills of Lading*, 671 (694).

**CANADA.**

On dried beet pulp from Wallaceburg, Ont., to points in New York and New Jersey, 30,000 pounds minimum in effect prior to February 18, 1915, and on that date increased to 40,000 pounds. On April 1, 1916, 30,000 pounds minimum restored. *Held*: Minimum of 40,000 pounds found unreasonable to extent it exceeded 34,000 pounds, in effect from Bay City, Mich. Reparation awarded. *Larowe Milling Co. v. C., W. & L. E. R. R.*, 145.

Railroads constituting a through route for traffic from a point in Canada to a point in the United States, concurring in a through rate or a carload minimum that was unreasonably high, are jointly and severally responsible for any damage that might result to any shipper on account of such unlawful rate or minimum. *Id.* (147).

Commission's jurisdiction over traffic from Canada into the United States is limited to that portion of the haul performed within the United States. *Id.* (147).

**CANCELLATION.** *See ABSORPTION; ADVANCE IN RATES.***CAR FITTING.** *See DUNNAGE.***CAR FURNISHING.**

Duty of a common carrier is to furnish equipment for transportation of articles it advertises to carry. *Armour & Co. v. E. P. & S. W. Co.*, 240 (244).

The right to furnish equipment is a very different thing from that of making allowances less than reasonable to shippers who are compelled to furnish their own cars, for the purpose of discouraging the use thereof. *Id.* (245).

Where defendants have suitable cars to carry all shipments of complainants, or will secure such cars, and furnish them on demand, they have the legal right to furnish them, and may refuse to transport shipments in privately owned cars. *Id.* (245, 246).

Contention that because defendants publish rates for the transportation of fresh meat they are not thereby obligated and ought not to be required to furnish cars suitable in which to transport such articles. *Held*: Contention not tenable. *Id.* (247).

**CAR FURNISHING—Continued.**

Allegation that cars furnished complainant were not proper cars for transporting milk and that complainant was unduly prejudiced and her competitors unduly preferred, not sustained. *Graustein v. B. & M. R. R.*, 269 (270, 279).

On horses from Pittsburgh, Pa., to Jersey City, N. J., no follow-lot rule in effect. Commercial horse cars ordered. Ordinary stock cars of smaller capacity accepted. Upon reargument, *Held*: Express charges unreasonable to extent they exceeded those that would have accrued had a follow-lot rule been in effect. Reparation awarded. *Northwestern Trading Co. (Inc.) v. Adams Express Co.*, 552.

**CARETAKERS.**

Allegation that the M. C., in connection with the B. & M., furnished caretakers to care for and help load milk at shipping points in Maine, whereas the Rutland, in connection with the B. & M., did not furnish such caretakers at complainant's shipping points in Vermont, discriminated against complainant, not sustained. *Graustein v. B. & M. R. R.*, 269 (279).

**CARGO.**

Average cargo said to approximate 6,000 tons and to require about 135 cars. *Cabin Creek Consolidated Coal Co. v. C. & D. Ry. Co.*, 181 (183).

**CARLOAD AND LESS-THAN-CARLOAD.**

Commodity rates on wholesale groceries from Chicago and Rock Island, Ill., Duluth and St. Paul, Minn., to Mobridge, S. Dak., found unduly prejudicial as to carload rates but not as to less-than-carload rates in favor of Aberdeen, S. Dak. *Mobridge Grocery Co. v. C. & M. & St. P. Ry. Co.*, 307 (315).

Class rates on flat wire braid from Niles, Mich., and Weehawken, N. J., to San Diego, Cal., found unreasonable to extent they exceeded fourth-class, c. 1., and first-class, l. c. 1., from Niles, and first-class, l. c. 1., from Weehawken: Reasonable rates prescribed and reparation awarded. *Savage Tire Co. v. A., T. & S. F. Ry. Co.*, 499.

**CARLOAD MINIMUM. See MINIMUM WEIGHT.****CARMACK AMENDMENT.**

Important decisions of the Supreme Court during period following the enactment of the Carmack amendment in 1906 down to enactment of the first Cummins amendment in 1915, cited. *Bills of Lading*, 671 (677).

Effect of Cummins amendment upon. *Id.* (678).

Cummins and Carmack amendments had effect of withdrawing from the states all regulatory authority and jurisdiction over questions of loss and damage, and of bringing such matters under federal law. *Id.* (678).

Quoted in part. *Id.* (682).

Effect of, upon initial carriers. *Id.* (682).

As interpreted by the courts. *Id.* (683).

Initial carrier liable under, for any loss or damage resulting from failure of final carrier to notify consignee of arrival of goods, and for failure, on consignees refusing to accept, to store for account of shipper or exercise proper care in holding for him. *Id.* (720).

Construed as to applicability of, to export traffic moving to adjacent and non-adjacent foreign countries. *Id.* (727-729).

**CARRIER COMPETITION. See COMPETITION.****CARS MOVING ON OWN WHEELS.**

Allegation that charges on new empty tank cars, on their own wheels, from Milton, Pa., and North St. Louis, Mo., to Chanute, Kans., and Cushing, Okla., and tariff rule providing for billing at regular tariff rates, when moved empty to home or loading point, were unreasonable and unduly prejudicial, *Held*: Not sustained. *Chanute Refining Co. v. A., T. & S. F. Ry. Co.*, 593.



**CARS MOVING ON OWN WHEELS—Continued.**

Extreme and unaccountable variations in rules and rates governing transportation of cars on their own wheels in the three principle classification territories are much in need of revision. *Id.* (597).

**CHARACTERISTICS OF COMMODITY.**

Eggs: Cracked eggs resist shocks almost as well as sound eggs. *National Poultry, Butter & Egg Assn. v. N. Y. C. R. R. Co.*, 47 (54).

Lumber: Movement of, is predominately in box cars. Rates on Lumber and Lumber Products, 598 (627).

**CHICAGO SWITCHING DISTRICT.**

Niles Center, Ill., in view of its location outside the switching district, *Held*: Not entitled to the Chicago basis of rates. *Stielow Bros. Co. v. C. & N. W. Ry. Co.*, 339 (343).

While recognizing its advantages, the Commission has also held that points just without or beyond that district can not be ignored when the question of through rates to the latter points comes up for consideration; particularly where there is substantial competition as between the points within and without the district. *Id.* (342-343).

**CIRCUITOUS ROUTES.**

Contention that carriers had not complied with Commission's order in 48 I. C. C., 201, in publishing rates from the Kansas gas belt to points intermediate to St. Louis, Mo., Omaha, Nebr., and Sioux City, Iowa, *Held*: Order permitted carriers to deviate from the fourth section at intermediate points upon indirect routes and rates via lines here under consideration do not constitute the short routes from the gas belt. *Western Cement Rates*, 225 (233).

Carriers representing indirect lines between Natchez, Miss., and points in Texas, authorized to meet rates made by direct lines and to continue higher rates to intermediate points, provided such intermediate rates do not exceed the scales prescribed. *Natchez Chamber of Commerce v. A. H. T. Ry. Co.*, 558 (575).

**CIRCUMSTANCES AND CONDITIONS.**

No material difference in southwestern territory in physical or transportation conditions in their relation to rate making and like uniformity of rate structure is desirable. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (119).

Surrounding traffic between Colorado common points and western Kansas and Nebraska are sufficiently dissimilar from those obtaining in eastern Kansas and Nebraska to justify some difference in rates. *Public Utilities Commission of Colorado v. A., T. & S. F. Ry. Co.*, 439 (452).

**CLAIMS. See LIMITATION OF ACTION.****CLASS AND COMMODITY RATES. See also CLASS RATES; COMMODITY RATES.**

Sixth-class rate on lumber from Laquin, Pa., to Springfield, N. J., exceeded lower commodity rate in effect over route of movement. Reparation awarded. *Central Pennsylvania Lumber Co. v. S. & N. Y. R. R. Co.*, 21.

Fifth-class rate on news print paper from San Francisco, Calif., to Dallas, Tex., exceeded subsequently established commodity rate. Reparation awarded. *Southwestern Paper Co., v. C., R. I. & P. Ry. Co.*, 39.

A commodity-rate adjustment as a whole should have due regard for the corresponding class-rate adjustment. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (122).

Carload commodity rates on wholesale groceries from Chicago and Rock Island, Ill., Duluth and St. Paul, Minn., to Mobridge, S. Dak., found unduly prejudicial to extent that the ratio of such commodity rates to the corresponding commodity rates to Aberdeen, S. Dak., exceeds the ratio of the corresponding fifth-class rates to Mobridge and Aberdeen. *Mobridge Grocery Co. v. C., M. & St. P. Ry. Co.*, 307 (315).

## CLASS AND COMMODITY RATES—Continued.

It can not be said that the proportion between the class rates and commodity rates must of necessity be the same from a common point of origin to one point as to another on the line of the same carrier. *Id.* (311).

Fifth-class rate on old rails and fastenings from New Madrid, Mo., to Madison, Ill., exceeded lower commodity rate subsequently established. Reparation awarded. *National Steel Rail Co. v. St. L.-S. F. Ry. Co.*, 325.

On a l. c. l. shipment of egg albumen from Tacoma, Wash., to Chicago, Ill., no specific rating in effect. First-class rate assessed found unreasonable to extent it exceeded lower import commodity rate subsequently established. Reparation awarded. *Bernard, Judae & Co. v. C., M. & St. P. Ry. Co.*, 361.

Combination class rate on nitrating acid, from Louviers, Colo., to Hopewell, Va., exceeded lower commodity rate subsequently established for that portion of the haul from Louviers to St. Louis. Reparation awarded. *Du Pont de Nemours Powder Co. v. D. & R. G. R. R. Co.*, 427.

Certain commodity rates from Chicago and the Mississippi and Missouri rivers to Colorado common points appear relatively high by comparison with rates to Utah common points, and assumption that commodity rates which are certain percentages of class rates are entitled to take the same percentages of a reduced class rate not found an adequate basis for a readjustment. *Public Utilities Commission of Colorado v. A., T. & S. F. Ry. Co.*, 439 (448-449).

Ocean-rail and rail-ocean-rail class and commodity rates from Atlantic seaboard territory to Colorado common points via Galveston, Tex., not found unreasonable or unduly prejudicial except to extent they exceed combination rates maintained through the port of Galveston. *Id.* (462).

Fifth-class rates on expansion paving joints from Lockland, Ohio, to Pacific coast destinations exceeded lower commodity rate applicable to prepared roofing. Reparation awarded. *Carey Co. v. A. G. S. R. R. Co.*, 484.

Class N rate on iron ore from Barkwood, Ga., to Middlesboro, Ky., exceeded lower commodity rate from White Path and Ellijay, Ga., farther distant points, to Middlesboro. Reparation awarded. *Betts v. Director General*, 519.

Fifth-class rate in effect prior to July 1, 1916, on cottonseed-hull shavings, from East St. Louis, Ill., to Hopewell, Va., exceeded lower commodity rate on cotton linters. Reparation awarded. *Du Pont de Nemours & Co. v. P., C., C. & St. L. R. R. Co.*, 533.

Sixth-class rate on acid phosphate from Carteret, N. J., to Philadelphia, Pa., exceeded lower commodity rate subsequently established. Reparation awarded. *American Agricultural Chemical Co. v. C. R. R. Co. of N. J.*, 550.

On cottonseed feed meal from Birmingham, Ala., to Nashville, Tenn., clearly described in shipping bills as feed, class D rate assessed found legally applicable and not shown unreasonable as compared with lower commodity rate on cottonseed meal and cottonseed cake. *Lanier Bros. v. L. & N. R. R. Co.*, 580.

Fourth class rate on vehicle wheels from Oxford, N. C., to Rock Hill, S. C., found unreasonable to extent it exceeded lower commodity rate from Oxford to Atlanta, Ga., to which Rock Hill is intermediate. *Rock Hill Buggy Co. (Inc.) v. S. Ry. Co.*, 583 (591).

When articles move at commodity rates to such a predominant extent that the class rates can no longer be regarded the normal adjustment, it is desirable to ascertain whether or not a standardization of rate relationships such as the classifications were intended to afford can again be effected, upon a new basis different from that found inadequate in the existing classifications. *Rates on Lumber and Lumber Products*, 598 (604).

CLASS RATES. *See also* CLASS AND COMMODITY RATES.

Distance scale of, between Mississippi River crossings, Memphis to New Orleans, inclusive, and western Louisiana and southern Arkansas points, which shall not exceed rates for like traffic and distances between western Louisiana points, and between western Louisiana points, and southern Arkansas points, required to be established. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (130).

Between Chicago, Ill., the Mississippi and Missouri rivers, on the one hand, and Colorado common points, on the other, not found unreasonable or unduly prejudicial, and adoption of New York-Chicago scale as basis for construction of rates found not warranted. *Public Utilities Commission of Colorado v. A., T. & S. F. Ry. Co.*, 439 (446, 448).

Between Denver and Pueblo and points in interior Kansas and Nebraska found unreasonable and unduly prejudicial to extent they exceed by more than 15 per cent those applied from Missouri River cities to points in Nebraska subject to the Missouri River-Colorado common-point rates as maxima. *Id.* (452-453).

Between Denver, Colo., and points in Texas found improperly aligned and no justification for maintenance of different bases northbound and southbound. *Id.* (459).

Between Denver, Colo., and points grouped therewith and Galveston and points in Texas intermediate thereto found unreasonable and unduly prejudicial to extent they exceeded by more than 25 per cent the rates herein prescribed. *Id.* (460).

From Denver, Colo., to points in New Mexico between Raton and Albuquerque and south of Albuquerque on the line to El Paso, Tex., found not unreasonably high. *Id.* (465).

Class rates from Denver, Colo., and points grouped therewith to certain stations herein enumerated in New Mexico, Arizona, and Texas, on the A., T. & S. F.; S. F., P. & P.; and R. G., E. P. & S. F., found unreasonable and unduly prejudicial to extent they exceed by more than 25 per cent the rates herein prescribed. *Id.* (467).

From Denver, Colo., to Santa Fe, N. Mex., via the D. & R. G. R. R., were permitted to be made higher locally in New Mexico than via other routes, owing to unusual difficulties of operation and light density of traffic. *Held: Rates* not unreasonable or unduly prejudicial. *Id.* (468).

From Denver, Colo., to points on the C. & N. W.; W. & N. W.; and C. & S., not found unreasonable or unlawful, but as to certain stations herein enumerated on the C., B. & Q. R. R., found unreasonable and unduly prejudicial to extent they exceed by more than 25 per cent rates herein prescribed. *Id.* (471).

Class rates on flat wire braid from Niles, Mich., and Weehawken, N. J., to San Diego, Calif., found unreasonable to extent they exceeded fourth-class, c. l., and first-class, l. c. l., from Niles, and first-class, l. c. l., from Weehawken. Reasonable rates prescribed and reparation awarded. *Savage Tire Co. v. A., T. & S. F. Ry. Co.*, 499.

Class rates between Natchez, Miss., and Texas points found unreasonable and unduly prejudicial to extent that they exceed for like distances class rates maintained between Shreveport, La., and Texas points. *Natchez Chamber of Commerce v. A. H. T. Ry. Co.*, 558 (568).

Class rates between Natchez and Houston-Galveston group found unduly prejudicial in so far as they exceed for like distances the class rates maintained between Shreveport and Texas points in common-point territory. *Id.* (570).

Class rates uniformly present wider spreads for the longer than for shorter distances, and in many cases follow strictly for all distances, and in others approximately a percentage relation between the classes. *Rates on Lumber and Lumber Products*, 598 (617).

**CLASSIFICATION.** *See also* LUMBER LIST.**In General:**

No classification can be so minute as to conform to the differing varieties and conditions of traffic, and to separate different grades or densities of the same article into different classes with varying rates; even if it could be accomplished, would go far to defeat the real purpose of classification. *Acme Belting Co. v. A. & R. R. Co.*, 15 (17).

A classification of given articles is effected by a determination of their rate relationship. *Rates on Lumber and Lumber Products*, 598 (602).

Classification factors should be considered in determining what articles should be grouped in the classification of articles. *Id.* (602).

Power of Commission to require carriers to furnish transportation "upon reasonable request therefor" is not brought in issue by the establishment of a new classification of articles which carriers definitely hold themselves out to transport. *Id.* (603).

When articles move at commodity rates to such a predominant extent that the class rates can no longer be regarded the normal adjustment, it is desirable to ascertain whether or not a standardization of rate relationships such as the classifications were intended to afford can again be effected, upon a new basis different from that found inadequate in the existing classifications. *Id.* (604).

The stage of manufacture of an article is only valuable as a guide in classification in so far as it indicates the transportation characteristics of the article concerned, and affords no criterion helpful in deciding what articles may or may not be included in a lumber list. *Id.* (604-605).

Classification should rest in the first instance upon those factors which are definite and readily ascertainable, such as value, risk, and car loading. *Id.* (605).

Prime object of all classification is to effect an equitable distribution of transportation costs and thus avoid rates which are unjustly prejudicial to certain articles and unduly preferential of others. *Id.* (607).

Value is a factor in classification. *Id.* (615).

The fact that the rate relationship of lumber and lumber products should be based upon their relative car loading does not lead to the conclusion that value and risk should never be regarded as determinative classification factors. *Id.* (617).

**Bases:** Commission not favorably impressed with the contention that there is no reason for the classification distinction between store or office fixture bases and other similar commodities, and that rating of first-class must be provided on each of these commodities "to prevent unjust discrimination as between the several articles." *Sherer-Gillett Co. v. B. & O. R. R. Co.*, 3 (6).

**Belting, cotton:** Ratings of second class in official and southern classifications and first class in western classification, l. c. l., not shown unreasonable. *Acme Belting Co. v. A. R. R. Co.*, 15.

**Counters and bases:** Following *National Commercial Fixture Mfrs. Assn.*, 40 I. C. C., 484, official classification rating of one and one-half times first-class on counters, wall-case bases, and shelving bases, l. c. l., found not unreasonable. *Sherer-Gillett Co. v. B. & O. R. R. Co.*, 3.

**Lamps:** Official classification rating of double first-class on "Globes or Shades, Lamp: Coppered, leaded, or framed glass" found legally applicable between April 1, 1915, and November 1, 1916, on lamps, complete with globes or shades of the framed glass type, with glass panels removed from frames and packed separately in same outer container. *Larkin Co. v. E. R. R. Co.*, 413 (416).

## CLASSIFICATION—Continued.

## Lumber and products:

Rates on, and classification of. Rates on Lumber and Lumber Products, 598  
Adoption of a lumber list, to be applied throughout the country, would be a classification of national scope, which would remove the undue inequalities resulting from prevailing inconsistencies in the rate relationship of lumber and lumber products. Id. (602).

Lumber lists take the place of the classification, and any exceptions thereto bear the same relation to it that a commodity rate bears to the standard classifications. Id. (605).

Because lumber is used in the manufacture of furniture, vehicles, agricultural implements, and toys, their inclusion in the lumber list must necessarily follow, *Held*: Such inference the Commission can not recognize as valid. Id. (605).

Views expressed in *Eastern Wheel Mfrs. Asso.*, 27 I. C. C., 370, 381, 382, and *Anson, Gilkey & Hurd Co.*, 33 I. C. C., 332, 341, confirmed, and existing lumber lists and classifications of lumber and lumber products found unjustly discriminatory to extent they depart from the lumber list herein prescribed. Id. (607).

While average value of articles grouped under agricultural implement and vehicle material, especially spokes, is higher than that of lumber, their values come within the range of values of lumber and therefore should not be accorded higher rates than lumber. Id. (608).

Agricultural implement and vehicle material, both in the rough and in the white, should be accorded rates no higher than on lumber. Id. (609).

Car loading constitutes to a very considerable extent the determinative factor. Id. (616).

Value is not a determinative factor in the classification of lumber and lumber products. Id. (617).

## Paper and paper boards:

Application of sixth-class rates on, throughout official classification territory, not justified. Building and Roofing Paper and Paper Board Rates, 84 (102).

Reasonable maximum rates on building and roofing, between points within c. f. a. territory and within trunk-line territory and between the two territories and between either of them and points in New England territory should not exceed 90 per cent of sixth-class rates. Id. (102).

## CLASSIFICATION TERRITORIES.

Maintenance of different arbitraries over Maine junctions to points in New England territory from trunk-line territory than from c. f. a. territory is unduly prejudicial and preferential and should be adjusted so that same arbitraries should be added to make through rates on shipments from points in both territories. Building and Roofing Paper and Paper Board Rates, 84 (103).

COMBINATION RATES. *See also* LOCAL RATES.

Rates on new tank cars from Milton and Sharon, Pa., and Warren, Ohio, via Virginia cities or Ohio River crossings, to the southeast, exceeded those based on short-line workable routes to and from the gateways through which they moved, or by combination of official classification ratings to the gateways and southern lines commodity rates beyond. Reparation awarded. *Aetna Explosives Co. v. A. G. S. R. R. Co.*, 235.

COMMERCIAL COMPETITION. *See* COMPETITION.

## COMMERCIAL CONDITIONS.

Commercial conditions offer no valid reason for further approval of the group and carrier competition can not be accepted as justification of the grouping. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (124).

**COMMODITY RATES.** *See also CLASS AND COMMODITY RATES.*

Proposed formula for constructing commodity rates to Texarkana group from lower Mississippi River crossings and Memphis territory. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (114, 139).

A commodity rate applicable to l. c. l. traffic is a pronounced departure from the usual practice, and the Commission should require its establishment only upon a clear showing of compelling reasons. *Public Utilities Commission of Colorado v. A., T. & S. F. Ry. Co.*, 439 (477).

In making, the rate maker must observe the law, which requires that rates shall be reasonable in and of themselves and also reasonable by relation. *Rates on Lumber and Lumber Products*, 598 (628).

**COMMON CARRIER.**

*Union Stock Yard & Transit Co. of Chicago* is a common carrier subject to the provisions of the act. *Live Stock Loading and Unloading Charges*, 209 (215, 222, 223).

*Chicago Junction Railway* held to be a common carrier by the Commerce Court which finding was sustained by the Supreme Court. *Id.* (212).

A stockyard company which receives live stock from carriers at its yards, pens, feeds and cares for the same, and maintains a public market for its sale, held by the Supreme Court to be a common carrier. *Id.* (212).

Term "common carrier" as construed by the Commerce Court. *Id.* (212).

**COMMON LAW LIABILITY.** *See LIABILITY; LIMITATION OF LIABILITY.***COMPANY MATERIAL.**

On coal from *Cortex No. 2 Mine, Pa.*, to *Barnegat, N. J.*, there held by carrier consignee and forwarded as company material via its own line to *Tuckerton, N. J.*, joint rates to *Tuckerton*, assessed. *Held*: Complainant entitled to joint rates to *Barnegat* and to distribute it from there to points on its line as company material. *Reparation awarded.* *Tuckerton R. R. Co. v. P. R. R. Co.*, 319.

**COMPARATIVE RATES.**

In general: An average article of commerce may properly be compared with the average of all traffic. *Building and Roofing Paper and Paper Board Rates*, 84 (97).

*Acid*: Rate on nitrating acid found unreasonable as compared with rate on sulphuric acid between same points. *Reparation awarded.* *Du Pont de Nemours Powder Co. v. D. & R. G. R. R. Co.*, 427.

*Bases*: It follows that if the rating of one and one-half times first class is reasonable on counters with bins and drawers, as the Commission found in *National Commercial Fixture Mfrs. Asso.*, 40 I. C. C., 484, the same rating is reasonable on bases with bins and drawers. *Sherer-Gillett Co. v. B. & O. R. R. Co.*, 3 (6).

*Bran, cottonseed-hull*: Rates on, from *East St. Louis, Ill.*, to *Kansas City, Mo.*, exceeded the rate on cottonseed cake or meal. *Reparation awarded.* *Feeders Supply Co. v. C., B. & Q. R. R. Co.*, 353.

*Cottonseed feed meal*: Class D rate assessed on, clearly described in shipping bills as feed, found legally applicable and not shown unreasonable as compared with lower commodity rate on cottonseed meal and cottonseed cake. *Lanier Bros. v. L. & N. R. R. Co.*, 580.

*Cottonseed-hull shavings*: Fifth-class rate on, in effect prior to July 1, 1916, from *East St. Louis, Ill.*, to *Hopewell, Va.*, exceeded lower commodity rate on cotton linters. *Reparation awarded.* *Du Pont de Nemours & Co. v. P., C., & C. St. L. R. R. Co.*, 533.

*Crossties*: The Commission has uniformly held that the rate on crossties should not exceed that on lumber of the same kind or class of wood, and in no case have they found that crossties are entitled to a lower rate than lumber. *Kettle River Co. v. M. P. Ry. Co.*, 73 (78).

## COMPARATIVE RATES—Continued.

**Logs:** Rates on logs moving short distances to sawmills in special logging trains on logging cars and under operating conditions entailing low costs may properly be made lower and independently of rates on lumber. Rates on Lumber and Lumber Products, 598 (625).

**Lumber products:**

Rates on, should not exceed commodity rates on lumber by more than is indicated in the lumber list herein prescribed. Rates on Lumber and Lumber Products, 598 (627).

Rates on lumber compared with rates on millwork, between representative points throughout the United States. Id. (610, 611).

Average loading of such articles as agricultural implement and vehicle material, cooperage stock, handle material, and veneer, is not so different from the average loading of lumber as to require differences in rates; but millwork, built-up wood, and silo material, load lighter per unit of space than lumber, and on this account ought to be accorded higher rates. Id. (616).

Lower rates prevail on such articles as logs, ties, bark, box material, and box shooks than on lumber, and the Commission's finding herein do not justify increases in rates on these articles. Id. (624).

**Paper, building and roofing:** Rates and car-mile earnings on, compared with rates on iron and steel, galvanized roofing, roofing tile, and stone. Building and Roofing Paper and Paper Board Rates, 84 (91).

**Paving joints:** Rates on expansion paving joints from Lockland, Ohio, to Pacific coast destinations exceeded rates on prepared roofing. Reparation awarded. *Carey Co. v. A. G. S. R. R. Co.*, 484.

**Phosphate, acid:** Rate on, from Carteret, N. J., to Philadelphia, Pa., found unreasonable as compared with rate on fertilizers, bulk phosphate, and fertilizer materials. Reparation awarded. *American Agricultural Chemical Co. v. C. R. R. Co. of N. J.*, 550.

**Poles and piling:** From the north Pacific coast and the inland empire, too long to be loaded on a single car, should take no higher rates than are applied on fir lumber in single carloads. Rates on Lumber and Lumber Products, 598 (627, 628).

**Wire braid:** Rates on, from Niles, Mich., and Weehawken, N. J., compared with rates on wire rope and cable, barb wire, and iron or steel wire cloth or netting. *Savage Tire Co. v. A., T. & S. F. Ry. Co.*, 499 (501).

## COMPENSATION.

A primary right of carrier is that of reasonable compensation for service rendered, and it is entitled to assure itself of such compensation by demanding it in advance. Bills of Lading, 671 (721).

## COMPETITION.

**Articles:**

**Grain and flour:** Competition in grain and flour is national in scope, and transit should not be regarded merely from the standpoint of service performed at any particular point. *Royal Milling Co. v. G. N. Ry. Co.*, 151 (153).

**Lumber and products:**

Water, carrier, and market competition have not affected lumber products differently from lumber to a degree sufficient to prevent the maintenance of a close rate relationship. Rates on Lumber and Lumber Products, 598 (605).

Veneer and built-up wood come into active competition with lumber. Id. (613).

Active competition between poles and piling from the Pacific coast with chestnut, cedar, and cypress poles produced in the southern states and in Pennsylvania and western New York. Id. (627).

**COMPETITION—Continued.**

**Carrier:** Commercial conditions offer no valid reason for further approval of the group, and carrier competition can not be accepted as justification of the grouping. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (124).

**Commercial:** Not function of Commission to regulate. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (122-123).

**Market:** Transcontinental carriers may adjust their rates to permit the freest competition in common markets between Pacific coast lumber and lumber products and the same commodities produced elsewhere, but they may not, by means of inequalities in their rates, confine the production of millwork from Pacific coast lumber to the Pacific coast. *Rates on Lumber and Lumber Products*, 598 (618).

**Ocean:** Rates on lumber from southern points to eastern destinations stated to be depressed by ocean competition, and southern roads are not in position to accept lower earnings than now accrue. *Lumber Transit Privileges at Buffalo, N. Y.*, 31 (37).

**Potential:**

Waterways in Louisiana are potential in their influence on rail service and rates. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (116).

Lower Mississippi River crossings are on an approximate parity. *Id.* (116).

If the influence of such competition from St. Louis and defined territories to the Shreveport group no longer exists, as stated in *Texarkana Freight Bureau*, 28 I. C. C., 569, there is no reason to assume that it continued from Memphis or lower Mississippi River crossings. *Id.* (122, 124).

**Water:**

Where specific commodity rates are published by water lines between Atlantic ports and adjacent territories the rates may be made with reference to water competition. *Building and Roofing Paper and Paper Board Rates*, 84 (103).

Lower rates caused by water competition, which controls in whole or to any considerable extent the measure of the rail rates within the state, and is not similarly forceful in its effect upon interstate rates, are not necessarily violative of the act. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (116).

Dominant influence in the Louisiana rate fabric. *Id.* (116).

With disappearance of water competition, responsible for the grouping, the boundaries of the group are more than ever artificial, and there appears to be just reasons for maintaining equal rates to other junction points beyond the group, they being subject to like carrier competition and in position to serve the same territory. *Id.* (123).

**COMPRESSION IN TRANSIT.** See **TRANSIT ARRANGEMENTS**.

**CONFERENCE RULING.** See **ADMINISTRATIVE RULINGS**.

**CONGESTION.**

Owing to congestion, complainant unloaded and stored on defendant's pier at Philadelphia, Pa., flour arriving from western states, for export. Original billing surrendered and flour hauled to another point in Philadelphia for reconditioning. Returned under local bill of lading marked "for export," and charges provided by domestic tariff assessed. *Held:* Shipment overcharged as under the particular circumstances, export shipment. *Reparation awarded.* *Shane Bros. & Wilson Co. v. P. R. R. Co.*, 403.

**CONNECTING LINES.**

Connecting lines forming a link in the chain of a through movement, by refusing to participate in discriminatory charges, could put an end to the discrimination. *Commercial Club of Omaha v. B. & O. R. R. Co.*, 255 (264).



## CONSIGNOR AND CONSIGNEE.

Section 4, proposed new provision of bill of lading for notice to consignor and consignee in the case of loss resulting in nondelivery and to the consignor in the case of goods refused or unclaimed at destination, disapproved. *Bills of Lading*, 671.

Consignor being the one with whom contract of transportation is made is originally liable for carriers' charges, and unless specifically exempted the carrier is entitled to look to consignor for charges. *Id.* (721).

## CONSOLIDATED TERRITORIES.

Scale territories I and II prescribed on cement in 48 I. C. C., 201, consolidated so as to provide for the application of scale territory II rates to the consolidated territories. *Western Cement Rates*, 225 (228).

## CONSTRUCTIVE MILEAGE.

Addition of 20 constructive miles proposed by carrier to compensate them for expenses incurred in crossing the Mississippi River at lower crossings approved. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (125, 129).

Addition of 20 constructive miles for river transfer at all lower Mississippi River crossings, Vicksburg to New Orleans, including Natchez, provided for application to findings herein. *Natchez Chamber of Commerce v. A. H. T. Ry. Co.*, 558 (564).

CONTAINERS. *See also* PACKAGES; PACKING.

Rate on dried fruit, in sacks, c. l., and in sacks and boxes, in mixed carloads, from California producing points to Boise, Idaho, via Ogden, Utah, not shown unreasonable or unduly prejudicial as compared with c. l. rate on the same commodity in boxes. *Boise Commercial Club v. O. S. L. R. R. Co.*, 375.

## COST OF SERVICE.

A switching service, especially where congestion prevails, is more expensive than a road haul for a like distance. *Stielow Bros. Co. v. C. & N. W. Ry. Co.*, 339 (342).

Light loading of millwork increases. *Rates on Lumber and Lumber Products*, 598 (617).

Relative car loading has a direct bearing upon. *Id.* (617).

CUMMINS AMENDMENT. *See also* RELEASED RATES.

Important decisions of the Supreme Court during the period following the enactment of the Carmack amendment in 1906 down to enactment of the first Cummins amendment in 1915, cited. *Bills of Lading*, 671 (677).

Effect of, upon Carmack amendment. *Id.* (678).

Cummins and Carmack amendments had effect of withdrawing from the states all regulatory authority and jurisdiction over questions of loss and damage, and of bringing such matters under federal law. *Id.* (678).

Provisions of first and second, quoted in part. *Id.* (683, 684).

Effect of second Cummins amendment upon first with respect to limitation of liability and rates dependent upon value. *Id.* (684-685).

Declarations or agreements limiting liability under the Cummins amendment shall not be deemed to be in violation of section 10 of the act. *Id.* (685).

Construed with respect to liabilities of carriers. *Id.* (725).

Construed as to applicability of, to export traffic moving to adjacent and non-adjacent foreign countries. *Id.* (727-729).

Commerce from a point in the United States to a point in a nonadjacent foreign country moving wholly intrastate from point of shipment to a port of export is not within purview of. *Id.* (729).

**DAMAGES.**

In original report 41 I. C. C., 753, reparation awarded but proper certification not furnished by the necessary defendants. Reparation due under original finding and parties entitled thereto determined herein. *Western Carolina Lumber & Timber Asso. v. S. Ry. Co.*, 28.

Following *Delaware, Lackawanna & Western Coal Co.*, 46 I. C. C., 506; 49 I. C. C., 203, claims for reparation on anthracite coal from points on the L. V. R. R. in the Wyoming, Lehigh, and Schuylkill regions in Pennsylvania, to interstate points on the L. V. R. R., denied. *Lehigh Valley Coal Sales Co. v. L. V. R. R. Co.*, 62.

Railroads constituting a through route for traffic from a point in Canada to a point in the United States, concurring in a through rate or a carload minimum that was unreasonably high, are jointly and severally responsible for any damage that might result to any shipper on account of such unlawful rate or minimum. *Larowe Milling Co. v. C. & W. & L. E. R. R.*, 145 (147).

In original report, 50 I. C. C., 327, reasonable maximum rates prescribed on mine props from points in Delaware, Maryland, and Virginia, to Shenandoah, Pa., and points taking same rates, but reparation denied. Upon reconsideration, reparation awarded on bases herein found reasonable. *Virginia Pine Timber Co. v. N. Y., P. & N. R. R. Co.*, 249 (250).

Defendants advanced rates, maintaining differential to conform with Commission's finding in original report, 40 I. C. C., 291. Advanced rates suspended and subsequently became effective. *Held*: Reparation for loss of trade and reduction in profits during interim, denied. *Kerr & Co. v. S. S. Ry. Co.*, 287.

It does not follow that reparation must be awarded because a rate adjustment is found unduly prejudicial. In such cases not only must the fact and amount of damage be clearly shown by the evidence, but the damage must be clearly traceable to the rate paid. *Id.* (290).

The voluntary reduction of a rate does not of itself constitute a basis for an award of reparation. *Aetna Explosives Co. v. A. G. S. R. R. Co.*, 423 (425).

While as a general rule awards of reparation will not be made where the rates affected have been the subject of a general readjustment, this does not apply where the rates charged exceed those found reasonable by such substantial amounts as to be intrinsically unreasonable under any adjustment. *King & Co. v. N., C. & St. L. Ry.*, 481 (483).

Following *Coffeyville Mercantile Co.*, 33 I. C. C., 122, 34 I. C. C., 231, reparation denied on shipments from St. Louis, Mo., and other points to Coffeyville and Independence, Kans. *Coffeyville Mercantile Co. v. A., T. & S. F. Ry. Co.*, 497.

Reparation awarded on pig iron moving from southern blast furnaces to Ohio River crossings and to certain points in c. f. a. territory, between April 17, 1910, and October 1, 1914, and moving rail-and-water to interior New England points between April 17, 1910, and June 25, 1918. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 576 (579).

Measure of damages under the common law for which carrier is liable for loss and damage, in the absence of specific stipulation, is the market value of the goods at destination, plus interest on such value from the date the goods should have been delivered, less unpaid transportation charges. *Bills of Lading*, 671 (710-711).

**DECLARED VALUE.** See CUMMINS AMENDMENT; RELEASED RATES.

**DEFICIT.**

*Louisiana & North West Railroad. Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (127).

**DELAY.** *See also* CONGESTION.

Section 1, clause 4: Liability of carrier for property while stopped and held in transit, found reasonable but should be amended so as to provide that carriers shall not be liable for "delay caused by riots or strikes." *Bills of Lading*, 671 (705).

Proposed rule in export bill of lading exempting carrier from liability for delay, and reduction of liability to that of warehouseman while property is awaiting further conveyance, disapproved and rule suggested should be adopted. *Id.* (737-738).

**DELIVERY.**

The duty to make delivery to the consignee of the goods transported is an essential part of the carrier's obligation whether expressed in the contract or not. *Bills of Lading*, 671 (696).

Defined. *Id.* (696, 701).

Duties of carrier and shipper in respect to delivery of goods are reciprocal. *Id.* (700).

The old common-law obligation of carriers to make personal delivery to the consignee is no longer applicable to railroads, while express companies are obligated to make personal delivery within defined territorial limits in cities and large towns. *Id.* (719).

**DEMURRAGE.**

On sawdust from East Jaffrey, N. H., to Bushwick station, Brooklyn, N. Y., diversion notice was received by carrier prior to arrival of the car. Car arrived July 23, 1917, and notice mailed to original consignee. New consignee did not receive notice of arrival until July 27. *Held*: Demurrage and track storage charges unreasonable. Reparation awarded. *Baker Box Co. v. L. I. R. R. Co.*, 1.

On cotton seed from Shreveport, La., to Vicksburg, Miss., and ultimately forwarded to Memphis, Tenn., under new bill of lading, demurrage accruing as a result of complainant's refusal to pay the legally applicable rate to Vicksburg, not shown unreasonable. *Humphreys-Godwin Co. v. V., S. & P. Ry. Co.*, 148 (150).

Rules applicable in 1915 and 1916 on shipments of lake cargo coal held at ports on Lake Erie, awaiting transshipment by water, not shown unreasonable because they limited the period for averaging debits and credits to less than the entire season of navigation. *Cabin Creek Consolidated Coal Co. v. C., H. & D. Ry. Co.*, 181 (183).

On apples arriving at Jersey City, N. J., complainant was notified by telephone and written notice mailed showing car initials and numbers, but not the contents or originating points. Contention that notices did not comply with tariff requirements, *Held*: Such defects not shown to have been the proximate cause of the detention. *Steinhardt & Kelly v. E. R. R. Co.*, 304.

Are imposed in the nature of a penalty and not for the benefit of a carrier, but in order to promote the free movement of cars in the public interest. *Id.* (306).

Owing to the frozen condition of bituminous coal arriving at Elizabeth, N. J., defendants were unable to unload and complainant withdrew its barges. Others subsequently placed and the coal ultimately unloaded. *Held*: Demurrage charges collected under tidewater average plan found illegal for period during which barges were at the pier, registered and ready to receive coal. Reparation awarded. *Hite & Rafetto v. C. R. R. Co. of N. J.*, 344.

**DENSITY OF TRAFFIC.** *See* VOLUME OF TRAFFIC.**DESCRIPTION.**

Of articles as submitted by carriers for publication in their tariffs found justified. *Building and Roofing Paper and Paper Board Rates*, 84 (103).

**DESIRABILITY OF TRAFFIC.**

Glass is a desirable commodity from a transportation standpoint, the damage in transit being negligible. *Bute Co. v. A., T. & S. F. Ry. Co.*, 380 (382).

**DETENTION. See DEMURRAGE.****DETERIORATION.**

Upon discovering eggs deteriorated by heat or cold in shipment, the consignee shall be entitled to a joint examination of the entire contents of the shipment.

*National Poultry, Butter & Egg Asso. v. N. Y. C. R. R. Co.*, 47 (60).

**DEVICE.**

Carriers can not always ascertain intentions of shippers, but where it is apparent from the surrounding circumstances and the manner in which a shipment is handled that the transaction is not in good faith, the Commission will look to what is actually done and the necessary effect thereof, irrespective of incidents of billing or transparent devices intended to defeat the law. *Tuckerton R. R. Co. v. P. R. R. Co.*, 319 (322).

**DIFFERENTIAL.**

During specific periods rates on lumber from Miley, S. C., a branch line point, to Norfolk, Va., and North Philadelphia and Chester, Pa., more than 2 cents over Hampton, S. C., not shown unreasonable inasmuch as rates from Miley not fixed with any relation to rates from Hampton. *Bright-Brooks Lumber Co. v. H. & B. R. R. & L. Co.*, 545.

Class rates between Natchez, Miss., and differential territory found unduly preferential to extent that they exceed maximum rates between Natchez and Texas common-point territory by more than the differentials in cents per 100 pounds for corresponding hauls in differential territory, applied on traffic to or from Shreveport. *Natchez Chamber of Commerce v. A. H. T. Ry. Co.*, 558 (569).

Carload rates on livestock from Texas points to Natchez found unduly prejudicial to extent they exceeded for distances of 750 miles or less, rates maintained from Texas points to Shreveport, La., and for distances over 750 miles, the rates from same points to Shreveport by more than 6 cents. *Id.* (570-571).

A percentage relationship between lumber and related articles will effect a fairer distribution of transportation costs than flat differentials. *Rates on Lumber and Lumber Products*, 598 (617).

**DIRECTOR GENERAL. See FEDERAL CONTROL ACT.****"DISCREPANCY."**

In weight at origin and destination when used in bills of lading covering shipments of grain, construed. *Bills of Lading*, 671 (692).

**DISCRIMINATION. See also PREFERENCES AND PREJUDICES.**

Conclusion in 41 I. C. C., 29, and 47 I. C. C., 263, that complainant is subjected to unjust discrimination by maintenance of a charge of 2 cents for milling wheat in transit at Great Falls, Mont., as compared with eastern and western termini mills, affirmed on rehearing. *Royal Milling Co. v. G. N. Ry. Co.*, 151.

Connecting lines forming a link in the chain of a through movement, by refusing to participate in discriminatory charges, could put an end to the discrimination. *Commercial Club of Omaha v. B. & O. R. R. Co.*, 255 (264).

**DISTANCE SCALE. See also SCALE OF RATES.**

Distance scale of class rates between Mississippi River crossings, Memphis to New Orleans, inclusive, and western Louisiana and southern Arkansas points, which shall not exceed rates for like traffic and distances between western Louisiana points, and between western Louisiana points and southern Arkansas, required to be established. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (130).

Illustration of distance class rates in effect in the state of Louisiana, Appendix No. 8. *Id.* (109,143).

## DISTANCE SCALE—Continued.

The fixing of a distance scale approximating or based upon *Shreveport Case* scale for uniform application at lower Mississippi River crossings will more equitably align, and better enable them to stand on the same competitive footing participating in the traffic upon their respective merits. *Id.* (121).

Scale territories I and II prescribed on cement in 48 I. C. C., 201, consolidated so as to provide for the application of the rates in scale territory II to the consolidated territories. *Western Cement Rates*, 225 (228).

In fixing scale rates on cement between specific points, distance via shortest routes embracing as a maximum the lines or parts of lines of no more than three carriers should be used in lieu of short line workable distance prescribed in 48 I. C. C., 201. *Id.* (229).

Grouping of the Kansas gas belt, including Dewey, Okla., and averaging of the distances therefrom where the short routes are through Kansas City, adhered to, but where the short routes are not through Kansas City, the short-line distance measured from Chanute, Kans., should be used for all mills in the group. *Id.* (229).

Scale territories I and II consolidated by making scale II rates applicable to scale territory I. From certain Indiana and Michigan points rates were based on scale territory I. *Held*: Change necessitates similar change in rates from Michigan and Indiana. *Id.* (232).

Class rates on crushed stone from Lambertville, N. J., to Port Ivory, N. Y., found unreasonable as compared with distance rates prescribed in *Birdsboro Stone Co.*, 49 I. C. C., 681. Reasonable rate prescribed and reparation awarded. *Procter & Gamble Mfg. Co. v. P. R. R. Co.*, 406.

## DISTURBANCE OF ADJUSTMENT.

Distances from lower Mississippi River crossings to the border of the Shreveport triangle being relatively short as compared with distances within the Shreveport triangle, further maintenance of blanket rates between lower Mississippi River crossings and points in Louisiana west of the Mississippi River on the one hand and the triangle on the other hand, disapproved. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (128).

DIVERSION. *See also* RECONSIGNMENT.

On sawdust from East Jaffrey, N. H., to Bushwick station, Brooklyn, N. Y., diversion notice was received by carrier prior to arrival of the car. Car arrived July 23, 1917, and notice mailed to original consignee. New consignee did not receive notice of arrival until July 27. *Held*: Demurrage and track storage charges unreasonable. Reparation awarded. *Baker Box Co. v. L. I. R. R. Co.*, 1.

Tariffs should be amended to permit change in consignee at first destination without charge, if order received in time to permit instructions to yard employees prior to arrival at first destination or at terminal yard serving such destination in conformity with rule 8 (a) approved in *The Reconsignment Case*, 47 I. C. C., 590, 641. *Id.* (2).

## DIVISIONS.

On lumber and forest products from points on the Laona & Northern R. R., to points on defendant's line or its connections, divisions or allowances to the Laona & Northern out of joint rates should not exceed 2 cents per 100 pounds. *Laona & Northern R. R. Co. v. M., St. P. & S. Ste. M. Ry. Co.*, 7.

Complainant testified that the present divisions are grossly inadequate, and that its financial statements for a number of years show a deficit. *Held*: The measure of proper divisions may not be influenced by complainant's financial needs. *Id.* (8).

## DIVISIONS—Continued.

Complainant insisted that its divisions on lumber and forest products should not be less than defendant's local carload rate applicable for a distance of 10 miles, *Held*: While local rates are of value in determining proper divisions of a joint rate over the same route, the local rates here referred to afford no such criteria, as there is no movement under complainant's local rate for a similar distance. *Id.* (8).

Petition for increased divisions of rates on shipments of lumber, originating south of the Ohio or west of the Mississippi and stopped at Buffalo, East Buffalo, Black Rock, or North Tonawanda, N. Y., for transit service and reconsignment, denied. Lumber Transit Privileges at Buffalo, N. Y., 31 (38).

Between Big Sandy & Cumberland R. R. Co., and Norfolk & Western Ry., in effect at time of hearing, not shown to have been unduly preferential or otherwise unlawful. Big Sandy & Cumberland R. R. Co., 347.

Failure to establish, does not render the rates inapplicable. Aetna Explosives Co. v. C. & E. I. R. R. Co., 393 (396).

On hardwood logs, originating at Grangeville Junction, La., on the New Orleans, Natalbany & Natchez Ry. and moving locally from Natalbany, La., the trunk line junction, to Memphis, Tenn., via the Illinois Central R. R., *Held*: Complainant not entitled to divisional allowance out of the local rates from the junction. New Orleans, Natalbany & Natchez Ry. Co. v. I. C. R. R. Co., 429.

DOMESTIC RATES. *See* IMPORT AND DOMESTIC RATES.

DOUBLE DECKING. *See* DUNNAGE.

## DUNNAGE.

Elimination of free dunnage allowances, not to exceed 500 pounds, used in connection with shipments of dynamite from Sinnemahoning and Emporium, Pa., to South Amboy, N. J., and applying thereon first-class rate applicable to high explosives, found justified. Aetna Explosives Co. v. P. R. R. Co., 173.

Dunnage used in connection with shipments of dynamite partakes of the nature of packing, or packing and bracing, adjuncts properly furnishable by the shipper, rather than ordinary equipment or ordinary equipment accessories properly furnishable by the carrier. *Id.* (175).

Principles upon which free transportation of, accorded. *Id.* (175).

It is a rule of almost universal application that the package is charged the same rate as its contents, and this is no less true of dunnage than of packages. *Id.* (175).

Following *Dunnage Allowances*, 30 I. C. C., 538, withdrawal of allowance for free transportation of material used in double-decking cars in connection with shipments of potatoes and onions, found justified. California Wholesale Potato Dealers Asso. v. A. E. R. R. Co., 334.

## DUTY OF CARRIER.

Is to furnish equipment for transportation of articles it advertises to carry. Armour & Co. v. E. P. & S. W. Co., 240 (244).

Is to collect, and shippers duty is to pay, freight charges based upon correct, not estimated weights. Bills of Lading, 671 (694).

The duty to make delivery to the consignee of the goods transported is an essential part of the carrier's obligation whether expressed in the contract or not. *Id.* (696).

Duties of carrier and shipper in respect to delivery of goods are reciprocal. *Id.* (700).

Carrier's legal obligations are confined to transportation and duties incident thereto, and it is not obliged to assume risks for convenience of consignor which have no direct relationship to its service of transportation. *Id.* (722.)

**DUTY OF SHIPPER.**

Loading and unloading of livestock, in carloads, at the Chicago stockyards is a duty of the shipper. *Live Stock Loading and Unloading Charges*, 209 (216, 223).

Carriers duty to collect and shippers duty to pay freight charges based upon correct, not estimated weights. *Bills of Lading*, 671 (694).

Duties of carrier and shipper in respect to delivery of goods are reciprocal. *Id.* (700).

**EARNINGS.** *See* **REVENUE.**

**ELECTRIC LINE.**

Joint rates not in excess of those maintained from Oklahoma group points prescribed on gasoline from points on complainant's line south of Coffeyville, Kans., to St. Louis, Mo., and points taking the same rates, over complainant's line to Coffeyville and the A., T. & S. F. and the M., K. & T. railways beyond. *Union Traction Co. v. A., T. & S. F. Ry. Co.*, 281 (285).

Applications of Louisville & Southern Indiana Traction Co. and Louisville & Northern Ry. & Lighting Co., for increased passenger fares between Louisville, Ky., and Jeffersonville, Ind., and New Albany, Ind., respectively, granted to extent they do not exceed 7 cents. *Louisville Passenger Fares*, 366.

**EMPTY MOVEMENT.**

Of refrigerator cars on the Santa Fe system for the year 1917, shown. *Armour & Co. v. E. P. & S. W. Co.*, 240 (243).

Allegation that charges on new empty tank cars, on their own wheels, from Milton, Pa., and North St. Louis, Mo., to Chanute, Kans., and Cushing, Okla., and tariff rule providing for billing at regular tariff rates, when moved empty to home or loading point, were unreasonable and unduly prejudicial, not sustained. *Chanute Refining Co. v. A., T. & S. F. Ry. Co.*, 593.

While equalization rules for empty movements have been gradually broadened so that the loaded mileage accruing during a designated period may be offset against the empty mileage, it never contemplated paying mileage on new or newly acquired empty tank cars before they are put into actual service and such movements have always been treated like any other freight. *Id.* (595).

The theory of paying allowances for empty movement presupposes a loaded movement. *Id.* (595).

**ERROR.** *See* **MISQUOTATION OF RATE.**

**ESTIMATED WEIGHT.** *See* **WEIGHT.**

**EXCURSION FARES.**

Summer excursion fares, effective during 1917, between Omaha, Nebr., and points east of the Mississippi River and north of the Ohio and Potomac rivers, and in the Dominion of Canada north of that territory, *Held*: To have been unduly prejudicial of Omaha to the preference of Kansas City and St. Joseph, Mo. *Commercial Club of Omaha v. B. & O. R. R. Co.*, 255.

Power of the Commission to determine whether or not fares were discriminatory or preferential may not be defeated by the fact that those fares expired by tariff provision before a decision could be rendered. *Id.* (258).

The normal basis for constructing summer excursion fares between Missouri River territory and the east is double the local fares from points of origin to the basing points. *Id.* (259).

**EXHIBITS.** *See* **APPENDIX.**

**EXPEDITED SERVICE.**

Section 3, clause 1, transportation to be only with reasonable dispatch unless by specific agreement indorsed on the bill. Words "unless by specific agreement indorsed hereon" would favor certain shippers through special indorsements and create undue prejudice of less favored competitors and should be eliminated. *Bills of Lading*, 671 (732).

**EXPORT BILL OF LADING. *See also* BILL OF LADING.**

Commission has no authority to require carriers to issue through export bills on traffic destined to nonadjacent foreign countries. Bills of Lading, 671 (726).

Commission has jurisdiction over rules, regulations and practices of inland carriers subject to the act, when, and if, they join in through bills of lading to nonadjacent foreign countries, and it requires such rules and regulations to be filed. (*Conference Ruling No. 578*). Id. (726-727).

Is not regarded by the Commission as a joint contract or undertaking for through carriage from an interior point in this country to a foreign port, but merely combining the separate and several contracts of rail carriers to the American port and the ocean carrier beyond. Id. (730).

Must clearly separate the liability of the rail and ocean carriers and show the published rate of the inland carrier. Id. (730).

Advantages of. Id. (730).

Section 1, clause 2, differences in elevator weights. "Differences in the weights of grain seed or other commodities caused by \* \* \* or discrepancies in elevator weights" impart an unlawful and unreasonable meaning into, and should be stricken from the uniform bill. Id. (695,731).

Section 1, clause 3, liability of carrier as insurer and warehouseman for loss, damage, or delay caused by fire. Proposed clause making carriers liability dependent upon sending or giving of notice of arrival and not upon delivery or tender of delivery, should be removed and clause changed in manner herein provided. Id. (731).

Section 1, clause 5, transportation in open cars. Proposed rule limiting carriers' liability on low grade, heavy, or bulky articles, found too broad in favor of carriers, and invalid to extent it falls within the provisions of the Cummins amendment in seeking to exempt the carriers from the liabilities with which it would be charged under the common law. Id. (731).

Section 2, clauses 1 and 2, agency of issuing carrier—proposed exemption of participating carrier from liability for loss, damage, or injury to property not occurring on its own line. Rule as suggested would be unlawful and void under terms of the Cummins amendment and should be supplemented in manner herein prescribed. Id. (731-732).

Section 3, clause 1, transportation to be only with reasonable dispatch unless by specific agreement indorsed on the bill. Words "unless by specific agreement indorsed hereon" would favor certain shippers through special indorsements and create undue prejudice of less favored competitors and should be eliminated. Id. (732).

Section 3, clause 3, measure of carrier's liability for loss or damage. Proposed rule provides for determination of value for loss or damage at point of origin while shippers specify that such value should be determined at destination. *Held*: Carriers' proposal not unreasonable, but rule should be amended. Id. (732-733).

Section 5, clause 1, carrier's liability as warehouseman after 48 hours. Proposed rule to relieve the carriers from liability for safe keeping of goods when sent to public or licensed warehouse after expiration of free time, not approved, and rule in lieu thereof suggested. Id. (733-735).

Section 5, clause 2, receipt or delivery of property at private or other sidings, wharves, or landings, etc. Provision of, to relieve carrier of all liability, except for its own negligence for loss and damage to property occurring at any time when property is not in car actually attached to a train or in or on a vessel, found unreasonable. Id. (735-736).



## EXPORT BILL OF LADING—Continued.

Section 9, clauses 1, 2, 3, 4, 5, and 6. Limitation of liability of water carriers.

Proposed rule exempting from liability carriers by water when participating in transportation subject to the act would be in contravention of the Cummins amendment, and is, therefore, null and void. Rule in lieu thereof proposed. Id. (735-737).

Section 10, clause 1, exemption from liability for delay, and reduction of liability to that of warehouseman, while the property is awaiting further conveyance. Proposed rule disapproved in part and rule suggested should be adopted. Id. (737-738).

Section 10, clause 2, termination of inland carrier's liability upon delivery made in accordance with existing arrangements at the port. Proposed rule approved. Id. (738-739).

## EXPORT TRAFFIC.

On pig iron arriving at Hoboken, N. J., no request made for unloading after notice of arrival. Held in cars pending arrival of vessel and subsequently unloaded by carrier to release equipment, and ultimately exported. Held: Storage charges based upon demurrage charges for period subsequent to unloading found unreasonable. Reparation awarded. *Naylor & Co. v. D., L. & W. R. R. Co.*, 397.

Owing to congestion, complainant unloaded and stored on defendant's pier at Philadelphia, Pa., flour arriving from western states, for export. Original billing surrendered and flour hauled to another point in Philadelphia for reconditioning. Returned under local bill of lading marked "for export." and charges provided by domestic tariff assessed. Held: Shipment overcharged as under the particular circumstances, an export shipment. Reparation awarded. *Shane Bros. & Wilson Co. v. P. R. R. Co.*, 403.

Transportation of traffic from an inland point to a port of export for export whether performed wholly within the confines of the state in which it originates or not, and whether the traffic be carried on local or through bills of lading, is subject to all the provisions of section 1. Bills of Lading, 671 (727).

Carmack and Cummins amendments construed as to applicability to export traffic moving to adjacent and nonadjacent foreign countries. Id. (727-729).

Commerce from a point in the United States to a point in a nonadjacent foreign country moving wholly intrastate from point of shipment to a port of export is not within the purview of the Cummins amendment. Id. (729).

Carrier is bound to issue bills of lading on shipments destined "from a point in the United States to a point in an adjacent foreign country" but the law does not require that such a bill shall be an "export" bill. Id. (732, 734).

## EXPRESS RATES.

Rates on fresh fruits and vegetables from Washington, Oregon, and Idaho, and on fish from Washington and Oregon, to all other points on defendants' lines, increased following *Proposed Increase in Express Rates*, 50 I. C. C., 385, round justified. Public Service Commission of Washington *v. American Ry. Exp. Co.*, 266.

On horses from Pittsburgh, Pa., to Jersey City, N. J., no follow-lot rule in effect. Commercial horse cars ordered. Ordinary stock cars of smaller capacity accepted. Upon reargument, Held: Express charges unreasonable to extent they exceeded those that would have accrued had a follow-lot rule been in effect. Reparation awarded. *Northwestern Trading Co. (Inc.) v. Adams Exp. Co.*, 552.

## FACTOR.

On bituminous coal to Niles Center, Ill., from interstate points, each factor of the combination rate, based on Chicago, Ill., was increased 15 per cent by order of the Director General. *Held*: Double increase not justified and through rate unreasonable to extent it exceeds by more than 15 cents the rates to Chicago. Reparation denied. *Stielow Bros. Co. v. C. & N. W. Ry. Co.*, 339 (343).

On old rails and angle bars from Jersey City, N. J., to Louin, Miss., charges found illegal and unreasonable to extent they exceeded the subsequently established commodity rate for the movement from New York to Louin. Reparation awarded. *Zelnicker Supply Co. v. M. S. S. Co.*, 363.

Combination rate on nitrating acid, from Louviers, Colo., to Hopewell, Va., found unreasonable due to the factor from Louviers to St. Louis, Mo. Reparation awarded. *Du Pont de Nemours Powder Co. v. D. & R. G. R. R. Co.*, 427.

Rates on vehicle parts from c. f. a. territory and Ohio River crossings to Rock Hill, S. C., not found unreasonable but found unduly prejudicial to Rock Hill to extent that factors south of the Virginia cities exceeded by more than specified amounts the factors applied on like traffic to Charlotte and Monroe, N. C. *Rock Hill Buggy Co. (Inc.) v. S. Ry. Co.*, 583 (588,589).

FARES. *See* PASSENGER FARES.

## FEDERAL CONTROL ACT.

Recognition must be given to changed conditions resulting from federal operation of railroads as a unified transportation system. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (123).

*Natchez, La.*, is laboring under greater prejudice than existed at time original complaint was brought as result of, and confirms the Commission's view that a uniform distance scale should be applied. *Id.* (130).

Record insufficient for determination of reasonableness of scale of rates suggested by Director General for general adoption in Louisiana and northern Arkansas, slightly lower than the Shreveport scale increased by 25 per cent. *Id.* (131).

On bituminous coal to Niles Center, Ill., from interstate points, each factor of the combination rate based on Chicago, Ill., was increased 15 per cent by order of the Director General. *Held*: Double increase not justified and through rate unreasonable to extent it exceeds by more than 15 cents the rates to Chicago. Reparation denied. *Stielow Bros. Co. v. C. & N. W. Ry. Co.*, 339 (343).

The present adjustment having removed the cause of complaint, and the Director General of Railroads not having been made a party defendant, complaint attacking rate on sugar from New Orleans, La., to Harrodsburg, Ky., dismissed. *Curry Grocery Co. (Inc.) v. S. Ry. Co.*, 373.

## FINANCIAL CONDITIONS.

Complainant testified that the present divisions are grossly inadequate, and that its financial statements for a number of years show a deficit. *Held*: The measure of proper divisions may not be influenced by complainant's financial needs. *Laona & Northern R. R. Co. v. M., St. P. & S. S. M. Ry. Co.*, 7 (8).

Needs of lines of unmistakable weakness should be provided for. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (129).

## FINDINGS OF COMMISSION.

The Commission looks to the substance and as a practical matter complainants are entitled to a finding whether or not fares were violative of the act, even though that finding is barren of a predicate for future affirmative relief. *Commercial Club of Omaha v. B. & O. R. R. Co.*, 255 (258-259).

**FIRE.**

Proposed clause making carrier's liability as warehouseman for loss, damage, or delay caused by fire, dependent upon the sending or giving of notice of arrival, and not upon delivery, or tender of delivery, should be removed and clause changed in manner herein provided. *Bills of Lading*, 671 (702).

**FIXING RATES.**

In fixing scale rates on cement between specific points, distance via shortest routes embracing as a maximum the lines or parts of lines of no more than three carriers should be used in lieu of short-line workable distance prescribed in 48 I. C. C., 201. *Western Cement Rates*, 225 (229).

Method to be used in constructing new key point rates for application in consolidated scale territories I and II. *Id.* (231).

In making commodity rates, the rate maker must observe the law, which requires that rates shall be reasonable in and of themselves and also reasonable by relation. *Rates on Lumber and Lumber Products*, 598 (628).

**FOLLOW LOT.**

On glass bottles from Poteau, Okla., to Dallas, Tex., complainant loaded excess into second car of larger dimensions. Contention that charges on excess should have been based on actual weight, *Held*: Charges assessed legally applicable and not unreasonable, as they could have been avoided by properly distributing the shipment. *Bayless Co. v. K. C. S. Ry. Co.*, 10.

On horses from Pittsburgh, Pa., to Jersey City, N. J., no follow-lot rule in effect. Commercial horse cars ordered. Ordinary stock cars of smaller capacity accepted. Upon reargument, *Held*: Express charges unreasonable to extent they exceeded those that would have accrued had a follow-lot rule been in effect, Reparation awarded. *Northwestern Trading Co. (Inc.) v. Adams Exp. Co.*, 552.

**FOREIGN COUNTRY.** *See ADJACENT FOREIGN COUNTRY; NONADJACENT FOREIGN COUNTRY.***FREE TIME.** *See also DEMURRAGE.*

Contention that free time allowance of five days at the Lake Erie ports to permit the accumulation of a cargo and the unloading into vessels, is insufficient, *Held*: Not an unreasonable limitation. *Cabin Creek Consolidated Coal Co. v. C., H. & D. Ry. Co.*, 181 (183).

Consignees may avail themselves of full free time before removal of goods and carrier is not released from liability while goods are in its custody. *Bills of Lading*, 671 (702).

**GATEWAYS.** *See also RIVER CROSSINGS.*

Rates on new tank cars from Milton and Sharon, Pa., and Warren, Ohio, via Virginia cities or Ohio River crossings, to the southeast, exceeded those based on short-line workable routes to and from the gateways through which they moved, or by combination of official classification ratings to the gateways and southern lines commodity rates beyond. Reparation awarded. *Aetna Explosives Co. v. A. G. S. R. R. Co.*, 235.

If cars had not been specifically routed by complainant, lowest combination of rates would have applied, but having routed through particular junctions, it can not complain because a lower rate applied via some other junction. *Id.* (238).

**GROUP RATES.**

Grouping of the Kansas gas belt, including Dewey, Okla., and averaging of the distances therefrom where the short routes are through Kansas City, adhered to, but where the short routes are not through Kansas City, the short-line distance measured from Chanute, Kans., should be used for all mills in the group. *Western Cement Rates*, 225 (229).

**GROUP RATES—Continued.**

Oglesby, Deer Park, La Salle, and Utica, Ill., points situated in close proximity, should be grouped and given the same rates. *Id.* (232).

Nature of group rates must be borne in mind when comparisons are made, but this can not be advanced as justification for group rates which are unduly prejudicial. *Natchez Chamber of Commerce v. A. H. T. Ry. Co.*, 558 (565).

**GROUPS.**

With disappearance of water competition, responsible for the grouping, the boundaries of the group are more than ever artificial, and there appears to be just reasons for maintaining equal rates to other junction points beyond the group, they being subject to like carrier competition and in position to serve the same territory. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (123).

There must be strong, compelling, and lawfully recognizable reasons for approval of rate groups, and a showing of unlawful discrimination is always sufficient for disapproval. *Id.* (124).

Commercial conditions offer no valid reason for further approval of the group, and carrier competition can not be accepted as justification of the grouping. *Id.* (124).

In any group arrangement of rates there generally exists inequality both of distance and of earnings as between the various points within the group. *Texas Cement Plaster Co. v. A., T. & S. F. Ry. Co.*, 293 (296).

**IMPORT AND DOMESTIC.**

On nitrate of soda from Chile, South America, to Pensacola, Fla., there stored in warehouses and subsequently forwarded to North Birmingham, Ala., import rate, applicable for ship side, assessed. Domestic rate, applicable from warehouses, legally applicable. *Held*: Rate legally applicable not found unreasonable or unlawful as compared with rate from Pensacola to Corinth, Miss. Refund of overcharges directed. *Aetna Explosives Co. v. L. & N. R. Co.*, 391.

**IMPORT RATES.**

On a less-than-carload shipment of egg albumen from Tacoma, Wash., to Chicago, Ill., no specific rating in effect. First-class rate assessed found unreasonable to extent it exceeded lower import commodity rate subsequently established. Reparation awarded. *Bernard, Judae & Co. v. C., M. & St. P. Ry. Co.*, 361.

**INBOUND AND OUTBOUND.**

Carload commodity rates on wholesale groceries from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., to Mobridge, S. Dak., found unduly prejudicial in favor of Aberdeen, S. Dak., but as to outbound less-than-carload rates not unduly prejudicial. *Mobridge Grocery Co. v. C., M. & St. P. Ry. Co.*, 307 (315).

**INFORMAL COMPLAINT. See LIMITATION OF ACTION.****INSPECTION**

Tariff rule that denies to consignee the right of inspection of cases of eggs that show no external evidence of damage, and exacts from such consignees "good order" or "apparent good order" receipts, held to be unreasonable in that it forces from shipper an apparent admission which may be used to prevent collection of lawful claims. *National Poultry, Butter & Egg Assn. v. N. Y. C. R. R. Co.*, 47 (60).

Lack of space for inspection, or any other limitation to the carrier's facilities must not be made the excuse for a rule that denies to shippers a lawful right. *Id.* (56).

**INSPECTION—Continued.**

If it has been necessary to recover any cases of eggs during transportation or to transfer a carload from one car to another, or if the load or any part of it has shifted, or if any cases show external evidence of damage, the consignee should be accorded an inspection of all the cases necessary to determine condition of the shipment, and receipt should be given in accordance therewith. *Id.* (60).  
 Upon discovering eggs deteriorated by heat or cold in any shipment, the consignee shall be entitled to a joint examination of the entire contents of the shipment. *Id.* (60).

Where carrier's station does not admit of the examination of a given shipment of eggs which requires inspection, the consignee shall be entitled to demand an examination of such shipment at his own warehouse. *Id.* (60).

**INSPECTION IN TRANSIT. See TRANSIT ARRANGEMENTS (STORAGE AND INSPECTION).****INTENTION.**

Carriers can not always ascertain intentions of shippers, but where it is apparent from the surrounding circumstances and the manner in which a shipment is handled that the transaction is not in good faith, the Commission will look to what is actually done and the necessary effect thereof, irrespective of incidents of billing or transparent devices intended to defeat the law. *Tuckerton R. R. Co. v. P. R. R. Co.*, 319 (322).

**INTERCHANGE SWITCHING.**

Charge of \$6 per car for switching traffic between complainant's plant and point of interchange with the B. & O. R. R., at Hutton, Md., found unreasonable to extent it exceeded \$4 per car, subsequently established and prescribed herein as maximum for the future. Reparation awarded. *Tioga Tanning Co. v. Preston R. R. Co.*, 252.

**INVESTIGATION.**

*Big Sandy & Cumberland R. R. Co.*, 347.

Classification of Lumber and Lumber Products, 598.

Bills of Lading, 671.

**ISSUE.**

Application of distance scale between Natchez, Miss., and Texas points will undoubtedly break up Louisiana common-point territory, and while the rates to and from these common points are not strictly in issue, the effect upon them of changes made in the Natchez rates should be taken into account. *Natchez Chamber of Commerce v. A. H. T. Ry. Co.*, 558 (567).

**JOBBER'S RATES.**

Carload commodity rates on wholesale groceries from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., to Mobridge, S. Dak., found unduly prejudicial in favor of Aberdeen, S. Dak., but as to outbound less-than-carload rates not unduly prejudicial. *Mobridge Grocery Co. v. C., M. & St. P. Ry. Co.*, 307 (315).

Aberdeen, S. Dak., enjoys an advantage in jobbers' rates on wholesale groceries from Chicago, Ill., under Mobridge, S. Dak. Complainant at Mobridge asks adjustment so as to enable it to compete on a parity with Aberdeen. *Held*: Such facts insufficient to warrant finding of undue or unreasonable prejudice or disadvantage. *Id.* (308).

**JOINT RATES.**

Failure of carriers to accord Natchez joint rates and specific through rates to and from western Louisiana and southern Arkansas points in such manner and to the same extent as between western Louisiana points and between western Louisiana and southern Arkansas points, found to subject Natchez to undue prejudice. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (128).

## JOINT RATES—Continued.

No conditions disclosed to justify establishment of joint rates on bituminous coal from Rapson, Colo., to points in Oklahoma and Kansas, via Amarillo, Tex. Rates charged found unreasonable and reasonable rates prescribed. *Rapson Coal Mining Co. v. C. & S. Ry. Co.*, 164.

Contention that maintenance of joint rates from mines in southern Illinois on the I. C. R. R., to points in northern Indiana and Ohio and lower Michigan, while failing to maintain such rates from mines on the I. C., in western Kentucky, subjects western Kentucky mines to undue prejudice. *Held*: No evidence to support contention that same joint rates should apply. *Ohio Valley Coal Operators Assn. v. L. & N. R. R. Co.*, 187 (188, 196).

Not in excess of those maintained from Oklahoma group points prescribed on gasoline from points on complainant's line south of Coffeyville, Kans., to St. Louis, Mo., and points taking the same rates over complainant's line to Coffeyville and the A., T. & S. F. and the M., K. & T. railways beyond. *Union Traction Co. v. A., T. & S. F. Ry. Co.*, 281 (285).

## JUNK.

Rates legally applicable on scrap iron and scrap rails from Houston, Tex., to Richmond, Va., not shown unreasonable. Shipment of scrap iron found overcharged. Reparation awarded. *Joseph Iron Co. v. A. G. S. R. R. Co.*, 22.

## JURISDICTION.

Commission has no jurisdiction over loss and damage claims. *National Poultry, Butter & Egg Assn. v. N. Y. C. R. R. Co.*, 47 (57).

Commission no power to require carriers to placard cars, run special trains, or to equip cars with special devices for transportation of eggs. *Id.* (59).

Not the function of the Commission to regulate commercial competition. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (122-123).

Commission's jurisdiction over traffic from Canada into the United States is limited to that portion of the haul performed within the United States. *Larowe Milling Co. v. C., W. & L. E. R. R.*, 145 (147).

Commission has power to prescribe reasonable compensation to be paid for use of cars not owned by common carriers under section 1, as amended, and section 15. *Armour & Co. v. E. P. & S. W. Co.*, 240 (245, 247).

The Commission has jurisdiction of carriers in the United States from any point to the border line. *Commercial Club of Omaha v. B. & O. R. R. Co.*, 255 (258).

Power of the Commission to determine whether or not fares were discriminatory or preferential may not be defeated by the fact that those fares expired by tariff provision before a decision could be rendered. *Id.* (258).

The Commission has power in a proper case to order carriers serving Kansas City, Mo., which do not serve Omaha, Nebr., to cease and desist from continuing a rate adjustment which unduly prejudices Omaha. *Id.* (264).

The Commission is empowered, under sections 1, 3, and 15, to effect a rate relationship between lumber and lumber products. *Rates on Lumber and Lumber Products*, 598 (603).

Power of Commission to require carriers to furnish transportation "upon reasonable request therefor" is not brought in issue by the establishment of a new classification of articles which carriers definitely hold themselves out to transport. *Id.* (603).

Enforcement of liability of carriers for loss or damage to shipments not within jurisdiction of the Commission. *Bills of Lading*, 671 (685).

Extent of Commission's jurisdiction governing terms and conditions that carriers may write into their bills of lading. *Id.* (685).

Of Commission over bills of lading. *Id.* (686).

**JURISDICTION—Continued.**

Commission has no authority to require carriers to issue through export bills on traffic destined to nonadjacent foreign countries. *Id.* (726).

Commission has jurisdiction over rules, regulations, and practices of inland carriers subject to the act, when, and if, they join in through bills of lading to nonadjacent foreign countries, and it requires such rules and regulations to be filed. (*Conference Ruling No. 378*). *Id.* (726-727).

**KEY-POINT RATES. See FIXING RATES.****LAKE-CARGO-COAL.**

Rules applicable in 1915 and 1916 on shipments of lake-cargo-coal held at ports on Lake Erie, awaiting transshipment by water, not shown unreasonable because they limited the period for averaging debits and credits to less than the entire season of navigation. *Cabin Creek Consolidated Coal Co. v. C., H. & D. Ry. Co.*, 181 (183).

**LEAKAGE.**

Discontinuance of allowances for reduction in weight, due to leakage and evaporation of moisture from brewers' wet grain in transit, found justified. *Farmers Feed Co. v. E. R. R. Co.*, 317.

**LEASE.**

Owner of a railroad, which is leased and operated by a lessee as a common carrier engaged in interstate commerce, may be required to make annual reports to the Commission. (*Finding of Commerce Court, 192 Fed., 330.*) *Live Stock Loading and Unloading Charges*, 209 (212).

**LEGAL RATES. See also OVERCHARGES.**

On flour from Portland, Corvallis and Silverton, Oreg., to Nashville, Tenn., combination rates from Corvallis and Silverton, with S. P. Co., as initial carrier, found legally applicable. Rate legally applicable from Portland also determined. *Nashville Roller Mills v. C., R. I. & P. Ry. Co.*, 491.

Findings in original report 51 I. C. C., 598, modified with respect to legally applicable rates on liquid petrolatum from Richmond, Calif., to Portland, Oreg., and other interstate destinations, and adjustment of charges directed on basis herein set forth. *Standard Oil Co. (California) v. A., T. & S. F. Ry. Co.*, 525.

On steel relay rails from Gueydan, La., to East St. Louis, Ill., no rate specifically applicable. *Held*: Rate charged found unreasonable to extent it exceeded combination rate applicable to points beyond Baton Rouge, plus rate from main line points west of Midland to New Orleans. Reparation awarded. *Zelnicker Supply Co. v. L. W. R. R. Co.*, 543.

**LESS-THAN-CARLOAD. See CARLOAD AND LESS-THAN-CARLOAD.****LIABILITY. See also LIMITATION OF LIABILITY; Loss and Damage.**

Railroads constituting a through route for traffic from a point in Canada to a point in the United States, concurring in a through rate or a carload minimum that was unreasonably high, are jointly and severally responsible for any damage that might result to any shipper on account of such unlawful rate or minimum. *Larowe Milling Co. v. C., W. & L. E. R. R.*, 145 (147).

Of common carriers under the common law. *Bills of Lading*, 671 (679).

Enforcement of liability of carriers for loss or damage to shipments not within jurisdiction of the Commission. *Id.* (685).

The carrier is liable, both at common law and under the federal statute, for any actual loss of goods caused by it while in transit. *Id.* (694).

Common-law liability of the carrier attaches at the time of delivery to, and acceptance by it, of the goods for immediate transportation. *Id.* (695-696).

The bills of lading act contains no provision respecting transition from liability of a common carrier to that of a warehouseman. *Id.* (696).

**LIABILITY—Continued.**

Consignees may avail themselves of full free time before removal of goods and carrier is not released from liability while goods are in its custody. *Id.* (702).

Measure of damages under the common law for which carrier is liable for loss and damage, in the absence of specific stipulation, is the market value of the goods at destination, plus interest on such value from the date the goods should have been delivered, less unpaid transportation charges. *Id.* (710-711).

Liability of a common carrier continues after the arrival of the goods in a freight yard at destination until placed at disposal of consignee. *Id.* (716-717).

Consignor being the one with whom contract of transportation is made is originally liable for carrier's charges, and unless specifically exempted, the carrier is entitled to look to consignor for charges. *Id.* (721).

Section 7, clause 2, liability for payment of freight charges. Suggestion of shippers governing, laying upon carriers duties or obligations extraneous to the service of transportation, disapproved. *Id.* (721-722).

Principal Congressional statutes affecting rights and liabilities of water carriers, cited. *Id.* (724).

Export bill of lading must clearly separate the liability of the rail and ocean carriers and show the published rate of the inland carrier. *Id.* (730).

**LIKE KINDS OF TRAFFIC. See also ANALOGOUS ARTICLES; COMPARATIVE RATES.**

No reason why paper boards of all kinds should be segregated from building and roofing paper and accorded a lower basis of rates. Building and Roofing Paper and Paper Board Rates, 84 (100).

**LIMITATION OF ACTION.**

Informal complaint filed by complainant on its own behalf within statutory period.

Formal complaints filed by complainant as assignee for various firms and individuals, consignees of the shipments who paid the freight charges. Assignments in favor of complainant were executed after expiration of the statutory period. Amendments were offered at the hearing adding names of various consignees as complainants. *Held:* Claims barred. *Horst Co. v. S. P. Co.*, 356 (358).

Claims not presented upon formal docket until more than two years after charges paid, held barred. *Alkire-Smith Auto Co. v. A., T. & S. F. Ry. Co.*, 507 (508).

**LIMITATION OF LIABILITY. See also LOSS AND DAMAGE.**

Origin and history governing, in this country and England. Bills of Lading, 671 (680).

A carrier may, unless forbidden by statute, limit or restrict, or even extend or enlarge, its common-law liability. *Id.* (680).

Effect of second Cummins amendment upon first, with respect to limitation of liability and rates dependent upon value. *Id.* (684-685).

Declarations or agreements limiting liability under the Cummins amendment shall not be deemed to be in violation of section 10 of the Act. *Id.* (685).

Carriers' common-law liability should cease and become that of a warehouseman only if consignee does not remove goods within a reasonable time after delivery. *Id.* (701).

Proposed clause making carrier's liability as warehouseman for loss, damage, or delay caused by fire, dependent upon the sending or giving of notice of arrival, and not upon delivery, or tender of delivery, should be removed and clause changed in manner herein provided. *Id.* (702).

Storing goods in transit by carrier at intermediate points because of interrupted transportation should be held to be a mere incident to the transportation and under protection of the rule which makes the carrier liable as an insurer from the time of transfer to the first carrier until delivered at the end of the route. *Id.* (704).



**LIMITATION OF LIABILITY—Continued.**

When goods are merely delivered to a carrier or deposited in its warehouse and are not to be transported until further orders from the owner, the carrier's liability is that of a warehouseman or bailee only. *Id.* (704, 705).

Section 1, clause 5, transportation in open cars. Proposed rule limiting carrier's liability on low grade, heavy, or bulky articles, found too broad in favor of carriers, and invalid to extent it falls within the provisions of the Cummins amendment in seeking to exempt the carriers from the liabilities with which it would be charged under the common law. *Id.* (706-708).

In absence of statutory prohibition, carrier may stipulate for limitation of its liability in receipt of goods transported in open cars, but can make no stipulation for exemption on account of loss and damage caused by its own negligence. *Id.* (707).

Section 2, clause 3, measure of carrier's liability for loss and damage. Proposed rule limiting carrier's liability when property shipped under rates dependent upon declared or agreed values found unlawful and should be eliminated. *Id.* (708-712).

Section 4, clause 1, general liability of carrier as warehouseman after 48 hours. Proposed rule to relieve the carriers from liability for safe keeping of goods when sent to public or licensed warehouse after expiration of free time, not approved, and rule in lieu thereof suggested by the Commission. *Id.* (712-713).

Section 4, clause 9, receipt or delivery of property at private or other sidings, wharves, landings, etc. Provision of, to relieve carrier of all liability, except for its own negligence for loss and damage to property occurring at any time when property is not in car actually attached to a train or in or on a vessel, found unreasonable. *Id.* (714-717).

Duty to give notice to consignor when shipment refused can only arise when carrier is required to make personal delivery. It has no application to railroads when goods are to be deposited in warehouses to await call, and failure as warehouseman to give such notice not such negligence as to make them liable for any loss caused thereby. *Id.* (719-720).

Section 9, clauses 1, 2, 3, 4, 5, and 6, limitation of liability of water carriers. Proposed rule exempting from liability carriers by water when participating in transportation subject to the act, would be in contravention of the Cummins amendment, and is therefore null and void. Rule disapproved. *Id.* (723-726).

Proposed rule in export bill of lading exempting participating carriers from liability for loss, damage, or injury to property not occurring on its own line, found unlawful and void under terms of Cummins amendment, and should be supplemented in manner herein provided. *Id.* (732).

Proposed rule in export bill of lading exempting carrier from liability for delay, and reduction of liability to that of warehouseman, while the property is awaiting further conveyance, disapproved and rule suggested should be adopted. *Id.* (737-738).

Proposed rule providing that "termination of inland carrier's liability upon delivery made in accordance with existing arrangements at the port," approved. *Id.* (738-739).

**LINE-HAUL CARRIERS.**

None of the line-haul carriers reach the Chicago stock yards with own rails, but all utilize the tracks of the Chicago Junction Railway, for which they pay a trackage charge. *Live Stock Loading and Unloading Charges*, 209 (218).

**LOADING.****In General:**

Differences in car loading are to a great extent dependent upon the fact that it is impossible to load as great a weight per unit of space of one commodity as of another. Rates on Lumber and Lumber Products, 598 (618).

Relative car loading has a direct bearing upon transportation costs. Id. (617).

Car loading of different commodities is often determined by commercial units of sale. Id. (618).

Door and window frames: When set up, can be loaded to greater advantage in mixed than in straight carloads. Rates on Lumber and Lumber Products, 598 (609).

Glass: Average loading per car approximates 46,000 pounds. *Bute Co. v. A., T. & S. F. Ry. Co.*, 380 (382).

**Lumber and products:**

Car loading of, constitutes to a very considerable extent the determinative factor in their classification. Rates on Lumber and Lumber Products, 598 (616).

Average loading of such articles as agricultural implements and vehicle material, cooperage stock, handle material, and veneer, is not so different from the average loading of lumber as to require differences in rates, but millwork, built up wood, and silo material, load lighter per unit of space than lumber, and on this account ought to be accorded higher rates. Id. (616).

The relative car loading of articles included in the uniform lumber list is the basis upon which a differentiation in rates should be made. Id. (617).

The prevailing carload minima tends to limit the range of loading per unit of space. Id. (618).

Millwork: Light loading of, increases cost of its transportation. Rates on Lumber and Lumber Products, 598 (617).

Sugar: There is no difficulty in loading a 36-foot car with 60,000 pounds and more of sugar; a 40-foot car by actual test will hold 102,000 pounds in bags and 90,960 pounds in barrels. *New Orleans Joint Traffic Bureau v. A. & S. Ry. Co.*, 23 (25).

**LOADING AND UNLOADING.**

The notice of cancellation of tariff of charges for loading and unloading live stock, in carloads, at the Chicago stockyards, found not justified. *Live Stock Loading and Unloading Charges*, 209 (215, 223).

Of live stock, in carloads, at the Chicago stockyards is a duty of the shipper. Id. (216, 223).

Of live stock, in carloads, at the Chicago stockyards may be assumed by the carriers in those instances in which their convenience is aided and their equipment conserved by so doing. Id. (221, 223).

Service performed by the Union Stock Yard & Transit Co., is for the benefit of the shipper, but tends also to the convenience of the line-haul carriers. Id. (223).

Line-haul carriers are under no obligation to load and unload live stock for shippers, and if they do so they are entitled to compensation therefor. Id. (223).

Live stock is a separate and distinct service not included in the transportation rate. Id. (223).

Failure to absorb all charges for loading and unloading live stock at the Chicago stockyards, while absorbing all such charges at certain other markets, has not been shown to produce undue prejudice against shippers of live stock at the Chicago stockyards. Id. (224).

**LOADING AND UNLOADING—Continued.**

In the absence of a showing of undue prejudice, how much, if any, of the loading and unloading charges at the Chicago stockyards may properly be absorbed by the line-haul carriers is dependent upon the degree to which their interests are served in any particular instance. *Id.* (224).

Owing to the frozen condition of bituminous coal arriving at Elizabeth, N. J., defendants were unable to unload and complainant withdrew its barges. Others subsequently placed and the coal ultimately unloaded. *Held*: Demurrage charges collected under tidewater average plan found illegal for period during which barges were at the pier, registered and ready to receive coal. Reparation awarded. *Hite & Rafetto v. C. R. R. Co. of N. J.*, 344.

**LOCAL RATES. See also COMBINATION RATES.**

Complainant insisted that its divisions on lumber and forest products should not be less than defendant's local carload rate applicable for a distance of 10 miles. *Held*: While local rates are of value in determining proper divisions of a joint rate over the same route, the local rates here referred to afford no such criteria, as there is no movement under complainant's local rate for a similar distance. *Laona & Northern R. R. Co. v. M., St. P. & S. S. M. Ry. Co.*, 7 (8).

**LOCATION.**

It is not the province of the Commission to make adjustments which will offset the natural advantages or disadvantages of one locality as compared with another. *Harrisonburg Milling Co. v. A. A. R. R. Co.*, 63 (72).

Each community is entitled to its natural advantages and antithetically should bear the results of its natural disabilities. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (128).

The Commission can not reduce rates which appear to be just and reasonable for the service performed, in order to equalize natural disadvantages of competing producers or localities, or to enable shippers to market their products at a profit. *Public Service Commission of Washington v. American Ry. Exp. Co.*, 266 (268).

**LONG AND SHORT HAUL. See also SECTION 4; THROUGH AND LOCAL.****In General:**

The mere fact that the rate to an intermediate point is higher than to a more distant point does not establish the unreasonableness of the rate to the former. *Smith-Connor Hay & Grain Co. v. A. C. L. R. R. Co.*, 331 (332).

*Barkwood, Ga.*: Rate on iron ore from, to Middlesboro, Ky., exceeded the rates from White Path and Ellijay, Ga., farther distant points, to Middlesboro. Reparation awarded. *Betts v. Director General*, 519.

*California points*: Authority to continue to charge for the transportation of hops from points in California to eastern destinations, rates which are lower than those maintained on like traffic to intermediate points, denied. *Horst Co. v. S. P. Co.*, 356 (360).

*Fort Payne, Ala.*: Rate and minimum weight on common brick from Chattanooga, Tenn., to Fort Payne, Ala., subsequently reduced to the rate and minimum applicable to Birmingham, Ala., a farther distant point, found unreasonable to that extent. Reparation awarded. *Chattanooga River Brick Co. v. A. G. S. R. R. Co.*, 337.

*Jennings, La.*: Applications to continue to charge rates on Portland cement from Richard City, Tenn., to Lake Charles, La., which are lower than on like traffic to Jennings, La., and from and to intermediate points, denied. *Dixie Portland Cement Co. v. N., O. & St. L. Ry.*, 517 (518).

## LONG AND SHORT HAUL—Continued.

## Natchez, Miss.:

Application seeking authority to maintain rates between Natchez, Miss., and Texas points, other than the Houston-Galveston group, which are lower than on like traffic from, to, or between intermediate points, denied. *Natchez Chamber of Commerce v. A. H. T. Ry. Co.*, 558 (574).

Application for authority to maintain lower rates on salt from Grand Saline to Natchez than to intermediate points on the T. & P. Ry., Willow Glen to Ferriday, La., inclusive, granted as to points between Addis and Ferriday, La. *Id.* (574).

Rock Hill, S. C.: Fourth-class rate on vehicle wheels from Oxford, N. C., to Rock Hill, found unreasonable to extent it exceeded lower commodity rate from Oxford to Atlanta, Ga., to which point Rock Hill is intermediate. *Rock Hill Buggy Co. (Inc.) v. S. Ry. Co.*, 583 (591).

Sulphur Mines, La.: Applications to continue rates on sulphur from Sulphur Mines, La., to Connable, Ala., which are lower than on like traffic to intermediate points, denied. *Du Pont De Nemours Powder Co. v. H. & B. V. Ry. Co.*, 538 (539).

Utah common points: Following *Blackman & Griffin Co.*, 40 I. C. C., 649, charges legally applicable on self-propelling vehicles and parts from eastern defined territories to Utah common points exceeded rates to Winnemucca, Nev., or to points intermediate between the Nevada-Utah state line and Utah common points. Reparation awarded. *Alkire-Smith Auto Co. v. A., T. & S. F. Ry. Co.*, 507 (509).

LOSS AND DAMAGE. *See also* Breakage.

Tariff rules applied to shipments of eggs reading that "claims for broken eggs will not be considered or paid by carriers when the number of eggs in any case or crate is not in excess of 5 per cent of the contents of such case or crate" held unreasonable except when applied to shipments of current receipts or current receipts rehanded. *National Poultry, Butter & Egg Asso. v. N. Y. C. R. R. Co.*, 47 (59).

Commission has no jurisdiction over. *Id.* (57).

Tariff rules reading "where quantity of broken eggs in any case or crate exceeds 5 per cent of the contents thereof, claims will be considered or adjusted by carriers only on such number of broken eggs in each case or crate which is in excess of 5 per cent of the total number of eggs in each such case or crate" held unreasonable except when applied to shipments of current receipts or current receipts rehanded. *Id.* (59).

Tariff rule that has effect of disclaiming all responsibility for damage to shipments of eggs in those instances in which the case or crate shows no external evidence of damage, held to be unreasonable in that it disclaims responsibility for damage which may have been due to negligence on the part of the carrier. *Id.* (59-60).

Upon discovering eggs deteriorated by heat or cold in any shipment, the consignee shall be entitled to a joint examination of the entire contents of the shipment. *Id.* (60).

Tariff rule that denies to consignee the right of inspection of cases of eggs that show no external evidence of damage, and exacts from such consignees "good order" or "apparent good order" receipts, held to be unreasonable in that it forces from shipper an apparent admission which may be used to prevent collection of lawful claims. *Id.* (60).

## LOSS AND DAMAGE—Continued.

If it has been necessary to reeoper any cases of eggs during transportation or to transfer a carload from one car to another, or if the load, or any part of it, has shifted, or if any cases show external evidence of damage, the consignee should be accorded an inspection of all cases necessary to determine the condition of the shipment, and receipt should be given in accordance therewith. *Id.* (60).

Differences in damage claims accruing in connection with the movement of lumber products is not sufficient to warrant differences in rates. Rates on Lumber and Lumber Products, 598 (616).

Cummins and Carmack amendments had effect of withdrawing from the states all regulatory authority and jurisdiction over questions of loss and damage, and of bringing such matters under federal law. Bills of Lading, 671 (678).

Liability of common carriers under the common law. *Id.* (679).

Origin and history governing limitation of liability for, in the United States and England. *Id.* (680).

Enforcement of liability of carriers for loss or damage to shipments, not within jurisdiction of the Commission. *Id.* (685).

The carrier is liable both at common law and under the federal statute for any actual loss of goods caused by it while in transit. *Id.* (694).

Proposed clause making carrier's liability as warehouseman for loss, damage, or delay caused by fire, dependent upon the sending or giving of notice of arrival, and not upon a delivery, or tender of delivery, should be removed and clause changed in manner herein provided. *Id.* (702).

In absence of statutory prohibition carrier may stipulate for limitation of its liability in receipt of goods transported in open cars, but can make no stipulation for exemption on account of loss and damage caused by its own negligence. *Id.* (707).

Section 2, clause 3, measure of carrier's liability for loss and damage. Proposed rule limiting carrier's liability when property shipped under rates dependent upon declared or agreed values found unlawful and should be eliminated. *Id.* (708-712).

Measure of damages under the common law for which carrier is liable for loss and damage, in the absence of specific stipulation, is the market value of the goods at destination, plus interest on such value from the date the goods should have been delivered, less the unpaid transportation charges. *Id.* (710-711).

Section 4, clause 9, receipt or delivery of property at private or other sidings, wharves, landings, etc. Provision of, to relieve carrier of all liability, except for its own negligence for loss and damage to property occurring at any time when property is not in car actually attached to a train, or in or on a vessel, found unreasonable. *Id.* (714-717).

Duty to give notice to consignor when shipment refused can only arise when carrier is required to make personal delivery. It has no application to railroads when goods are to be deposited in warehouse to await call, and failure as warehouseman to give such notice, not such negligence as to make them liable for any loss caused thereby. *Id.* (719-720).

Proposed rule in export bill of lading exempting participating carriers from liability for loss, damage, or injury to property not occurring on its own line, found unlawful and void under terms of Cummins amendment, and should be supplemented in manner herein provided. *Id.* (732).

Proposed rule of uniform bill of lading provides for determination of value for loss or damage at point of origin while shippers specify that such value should be determined at destination, *Held:* Carriers' proposal not unreasonable, but rule should be amended. *Id.* (732-733).

**LOSS OF TRADE.** *See* PROFIT.

**LUMBER LIST.** *See also* CLASSIFICATION.

Lumber and certain wood articles grouped with lumber in commodity tariffs either at lumber rates or at differentials over the rates on lumber are termed "lumber lists." Rates on Lumber and Lumber Products, 598 (601).

Adoption of, to be applied throughout the country, would be a classification of national scope, which would remove the undue inequalities resulting from prevailing inconsistencies in the rate relationship of lumber and lumber products. *Id.* (602).

Takes the place of the classifications, and any exceptions thereto bear the same relation to it that a commodity rate bears to the standard classifications. *Id.* (605).

It is necessary to exclude from a lumber list only such articles, the rates upon which are determined by factors which prevent a constant rate relationship to lumber, such as water, carrier, and market competition. *Id.* (605).

Sections of the country where previously maintained. *Id.* (606).

Views expressed in *Eastern Wheel Mfrs. Asso.*, 27 I. C. C., 370, 381, 382, and *Anson, Gilkey & Hurd Co.*, 33 I. C. C., 332, 341, confirmed, and existing lumber lists and classifications of lumber and lumber products found unjustly discriminatory to extent they depart from the lumber list herein prescribed. *Id.* (607).

Needed principally to effect an equitable distribution of transportation costs and thus avoid rates which are unjustly prejudicial to certain articles and unduly preferential of others. *Id.* (607).

Carriers' proposal to eliminate from lumber lists all articles grouped under agricultural implement and vehicle material, except those which are merely rough sawed, on ground that the articles sawed to shape, turned, or bent, are advanced beyond lumber in stage of manufacture, *Held:* Stage of manufacture, in and of itself, not the determining factor. *Id.* (608).

Prescribed by the Commission. *Id.* (619, 620-624).

**MANUFACTURED ARTICLES.**

Generally rated higher than the raw materials. *Acme Belting Co. v. A. & R. R. Co.*, 15 (16).

The stage of manufacture of an article is only valuable as a guide in classification in so far as it indicates the transportation characteristics of the article concerned, and affords no criterion helpful in deciding what articles may or may not be included in a lumber list. Rates on Lumber and Lumber Products, 598 (604-605).

Because lumber is used in the manufacture of furniture, vehicles, agricultural implements, and toys, their inclusion in the lumber list must necessarily follow, *Held:* Such inference the Commission can not recognize as valid. *Id.* (605).

Carrier's proposal to eliminate from lumber lists all articles grouped under agricultural implement and vehicle material, except those which are merely rough sawed, on ground that the articles sawed to shape, turned, or bent are advanced beyond lumber in stage of manufacture, *Held:* Stage of manufacture, in and of itself, not the determining factor. *Id.* (608).

**MAPS.**

Milling points on the Harrisonburg branch of the Southern Railway for grain originating in c. f. a. territory. *Harrisonburg Milling Co. v. A. A. R. R. Co.*, 63 (64).

Shreveport triangle. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (110).

**MARKET COMPETITION.** *See* COMPETITION.

**MARKETS.** *See also* PRIMARY MARKETS.

Western Kentucky coal found market at Cincinnati, Ohio, during abnormal conditions due to the war, and under a proper adjustment of rates it will find a market there during normal times. *Ohio Valley Coal Operators Assn. v. L. & N. R. R. Co.*, 187 (192).

**MAXIMUM RATES.**

The Commission has repeatedly held that the first-class rates were the maximum reasonable rates on higher explosives, in carloads. *Aetna Explosives Co. v. C. & E. I. R. R. Co.*, 26 (27).

**MEASURE OF RATES.**

Mere fact that rates on building and roofing paper and paper boards yield more revenue than the average on all traffic of defendants is not conclusive that they are higher than reasonable. *Building and Roofing Paper and Paper Board Rates*, 84 (100).

A reasonable rate may not be based upon consideration only of the value of the property owned and used by an express company. *Public Service Commission of Washington v. American Ry. Express Co.*, 266 (268).

**MILEAGE RATES.** *See* DISTANCE SCALE.**MILK-SHIPPING STATIONS.**

Allegation that complainant was denied and her competitors furnished receiving and loading stations for shipments of milk with the result that complainant was unduly prejudiced and her competitors unduly preferred, not sustained. *Graustein v. B. & M. R. R.*, 269 (270, 279).

**MILLING IN TRANSIT.** *See* TRANSIT ARRANGEMENTS.**MINIMUM CHARGES.**

Application of higher minimum charges on traffic from Natchez, Miss., than are applied between points in Louisiana on and west of the Mississippi River found to be unduly prejudicial. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (128).

Minimum charges on high explosives, 1. c. l., from Fayville, Ill., to interstate destinations served by the Grand Trunk Western Ry. exceeded charges maintained by other carriers throughout the same general territory. Reasonable joint minimum prescribed. *Aetna Explosives Co. v. C. & E. I. R. R. Co.*, 393.

**MINIMUM WEIGHT.** *See also* WEIGHT.

Beet pulp: On dried beet pulp from Wallaceburg, Ont., to points in New York and New Jersey, 30,000-pound minimum in effect prior to February 18, 1915, and on that date increased to 40,000 pounds. On April 1, 1916, 30,000-pound minimum restored. *Held*: Minimum of 40,000 pounds found unreasonable to extent it exceeded 34,000 pounds, in effect from Bay City, Mich. Reparation awarded. *Larrowe Milling Co. v. C., W. & L. E. R. R.*, 145.

Concrete mixers: On concrete mixers, from Waterloo, Iowa, to Tacoma, Wash., minimum weight of 30,000 pounds found not unreasonable. *Crowe & Co. v. N. P. Ry. Co.*, 351.

**Lumber and products:**

No basis for establishing different rates for different minima. *Rates on Lumber and Lumber Products*, 598 (619).

The prevailing carload minima tends to limit the range of loading per unit of space. *Id.* (618).

Sugar: Carload minimum on sugar from New Orleans, La., and points taking same rates to Texas destinations not shown unreasonable but found prejudicial to New Orleans and points taking same rates as compared with minimum from Sugarland, Tex. *New Orleans Joint Traffic Bureau v. A. & S. Ry. Co.*, 23.

**MISQUOTATION OF RATE.**

Both carrier and shipper are presumed to know the lawful rate, and a misquotation of the rate applicable affords, of itself, no ground for authorizing a departure from the lawful rate. *Wisconsin Granite Co. v. C. & N. W. Ry. Co.*, 330 (331).

**MISROUTING.**

On oak lumber from Homer, La., to New York, N. Y., routing instructions followed but rate specified in bills of lading applied via route other than route of movement. *Held*: Following Conference Ruling 474-c, shipments misrouted. Reparation awarded. *Doyle v. L. & N. W. R. R. Co.*, 327

On lumber from Costello, Pa., to Curriers, N. Y., routing instructions inserted in bill of lading but no rate. Lower combination rate, consistent with routing instructions, in effect via route other than route of movement. *Held*: Shipments misrouted and reparation awarded. *Central Pennsylvania Lumber Co. v. B. & S. R. R. Corp.*, 329.

On granite paving blocks from Red Granite, Wis., to Kansas City, Mo., no rate inserted in bill of lading. Shipments moved as routed by shipper but lower rate in effect via another route. *Held*: Shipments not misrouted. *Wisconsin Granite Co. v. C. & N. W. Ry. Co.*, 330.

On lumber from Spring Hill, La., to Johnstown, Pa., lower rate applied via a route other than route of movement, which was consistent with routing instructions in the bill of lading. Reparation awarded. *Ferguson Lumber Co. v. L. & A. Ry. Co.*, 486.

On lumber from Gable, S. C., to East Norwood, Ohio, routed "B. & O. delivery," shipment moved via Potomac Yard, Va. Lower rate in effect via Augusta, Ga. *Held*: Rate charged not shown unreasonable but shipment found misrouted. Reparation awarded. *Pine Plume Lumber Co. v. A. R. R. Co.*, 541.

**MISTAKE.** See MISQUOTATION OF RATE.

**MIXED CARLOADS.**

Set-up door and window frames can be loaded to greater advantage in mixed than in straight carloads. Rates on Lumber and Lumber Products, 598 (609).

**MODIFICATION.** See SUPPLEMENTAL REPORT.

**NEW CARS.** See also CARS MOVING ON OWN WHEELS.

Rates on new tank cars from Milton and Sharon, Pa., and Warren, Ohio, via Virginia cities or Ohio River crossings, to the southeast, exceeded those based on short-line workable routes to and from the gateways through which they moved, or by combination of official classification ratings to the gateways and southern lines commodity rates beyond. Reparation awarded. *Aetna Explosives Co. v. A. G. S. R. R. Co.*, 235.

**NONADJACENT FOREIGN COUNTRY.**

Commission has no authority to require carriers to issue through export bills on traffic destined to. Bills of Lading, 671 (726).

Commission has jurisdiction over rules, regulations, and practices, of inland carriers subject to the act, when, and if, they join in through bills of lading to nonadjacent foreign countries, and it requires such rules and regulations to be filed. (*Conference Ruling 578*). *Id.* (726-727).

Commerce from a point in the United States to a point in a nonadjacent foreign country moving wholly intrastate from point of shipment to a port of export is not within purview of the Cummins amendment. *Id.* (729).



## NOTICE OF ARRIVAL.

On sawdust from East Jaffrey, N. H., to Bushwick station, Brooklyn, N. Y., diversion notice was received by carrier prior to arrival of the car. Car arrived July 23, 1917, and notice mailed to original consignee. New consignee did not receive notice of arrival until July 27. *Held*: Demurrage and track storage charges unreasonable. Reparation awarded. *Baker Box Co. v. L. I. R. R. Co.*, 1.

Contention that notices were insufficient because they did not specify the point of shipment, and if the car was transferred, the initial and number of the original car, *Held*: Complainant not shown to have suffered any damage by reason of this lack of information. *Cabin Creek Consolidated Coal Co. v. C., H. & D. Ry. Co.*, 181 (185).

On apples arriving at Jersey City, N. J., complainant was notified by telephone and written notice mailed showing car initials and numbers, but not the contents or originating points. Contention that notices did not comply with tariff requirements. *Held*: Such defects not shown to have been the proximate cause of the detention. *Steinhardt & Kelly v. E. R. R. Co.*, 304.

Purpose of, is to apprise the consignee that a car has reached destination or a recognized hold point, and is being held for delivery or awaiting disposition orders. *Id.* (305).

Should be clear, definite, and contain all necessary information, and where notice does not apprise the consignee of the situation, he should seek further enlightenment from the carrier. *Id.* (305).

Where notice has been given in substantial compliance with the requirements of a tariff, its sufficiency may not be questioned after the expiration of a specified time. *Id.* (305).

Duty to give notice to consignor when shipment refused can only arise when carrier is required to make personal delivery, it has no application to railroads when goods are to be deposited in warehouse to await call, and failure as warehouseman to give such notice not such negligence as to make them liable for any loss caused thereby. *Bills of Lading*, 671 (719-720).

Section 4, proposed new provision for notice to consignor and consignee in the case of loss resulting in nondelivery and to the consignor in the case of goods refused or unclaimed at destination, disapproved. *Id.* (717-720).

Initial carrier liable under Carmack amendment for any loss or damage resulting from failure of final carrier to notify consignee of arrival of goods, and for failure, on consignees refusing to accept, to store for account of shipper or exercise proper care in holding for him. *Id.* (720).

OCEAN-AND-RAIL. *See* RAIL-AND-WATER.

OCEAN COMPETITION. *See* COMPETITION.

## OFF-LINE CHARGE.

Joint rates on grain products from c. f. a. territory to Carolina territory, plus 1 cent for off-line movement of the grain from Charlottesville or Basic to Staunton and the products from Staunton to Charlottesville, Va., not required to be established. *Harrisonburg Milling Co. v. A. A. R. R. Co.*, 63 (71).

## OPEN CARS.

Section 1, clause 5, transportation in open cars. Proposed rule limiting carrier's liability on low grade heavy, or bulky articles, found too broad in favor of carriers, and invalid to extent it falls within the provisions of the Cummins amendment in seeking to exempt the carriers from the liabilities with which it would be charged under the common law. *Bills of Lading*, 671 (706-708).

Carriers commonly hold themselves out to transport certain goods which of necessity must be transported in open cars, and they must therefore receive and transport them when offered for shipment. *Id.* (707).

**OPEN CARS**—Continued.

In absence of statutory prohibition carrier may stipulate for limitation of its liability in receipt of goods transported in open cars, but can make no stipulation for exemption on account of loss and damage caused by its own negligence. *Id.* (707).

**OPERATING CONDITIONS.**

Class rates from Denver, Colo., to Santa Fe, N. Mex., via D. & R. G. R. R., were permitted to be made higher locally in New Mexico than via other routes, owing to unusual difficulties of operation and light density of traffic. *Held*: Rates not unreasonable or unduly prejudicial. Public Utilities Commission of Colorado *v.* A., T. & S. F. Ry. Co., 439 (468).

Rates on logs moving short distances to sawmills in special logging trains on logging cars and under operating conditions entailing low costs may properly be made lower and independently of rates on lumber. Rates on Lumber and Lumber Products, 598 (625).

**OPPOSITE DIRECTION.** *See BOTH DIRECTIONS.***OVERCHARGES.**

Rates legally applicable on scrap iron and scrap rails from Houston, Tex., to Richmond, Va., not shown unreasonable. Shipment of scrap iron found overcharged. Reparation awarded. Joseph Iron Co. *v.* A. G. S. R. R. Co., 22.

On nitrate of soda from Chile, South America, to Pensacola, Fla., there stored in warehouses and subsequently forwarded to North Birmingham, Ala., import rate, applicable from ship-side assessed. Domestic rate, applicable from warehouses, legally applicable. Refund of overcharges directed. Aetna Explosives Co. *v.* L. & N. R. R. Co., 391.

On lumber from Westville, S. C., to Bath Beach, N. Y., rate charged exceeded lower combination rate legally applicable. *Held*: Shipments overcharged and reparation awarded. Tweed Lumber Co. *v.* S. Ry. Co., 493.

**PACKAGES.** *See also CONTAINERS.*

It is a rule of almost universal application that the package is charged the same rate as its contents, and this is no less true of dunnage than of packages. Aetna Explosives Co. *v.* P. R. R. Co., 173 (175).

**PACKING.** *See also CONTAINERS.*

Apples: Methods used in shipping various grades. Public Utilities Commission of Kansas *v.* A. & S. Ry. Co., 198 (200).

Dynamite: Dunnage used in connection with shipments of dynamite partakes of the nature of packing, or packing and bracing, adjuncts properly furnishable by the shipper, rather than ordinary equipment or ordinary equipment accessories properly furnishable by the carrier. Aetna Explosives Co. *v.* P. R. R. Co., 173 (175).

Eggs: Method of packing eggs described. National Poultry, Butter & Egg Asso. *v.* N. Y. C. R. R. Co., 47 (51).

Lamps: Manner of packing various types of portable and nonportable lamps, described. Larkin Co. *v.* E. R. R. Co., 413 (414).

**PAPER RATES.**

The fact that there is no movement of lumber between two points is no justification for the permanent maintenance of rates out of line with the general adjustment. Rates on Lumber and Lumber Products, 598 (625).

Serve no useful purpose. *Id.* (625).

**PARITY OF RATES.**

Commission can not approve of unreasonably high rates from Natchez to the nearest points in Texas merely to preserve the parity of rates to all points within the common-point group. Natchez Chamber of Commerce *v.* A. H. T. Ry. Co., 558 (566).

**PARTIES.**

Informal complaint filed by complainant on its own behalf within statutory period. Formal complaints filed by complainant as assignee for various firms and individuals, consignees of the shipments who paid the freight charges. Assignments in favor of complainant were executed after expiration of the statutory period. Amendments were offered at the hearing adding names of the various consignees as complainants. *Held*: Claims barred. *Horst Co. v. S. P. Co.*, 356 (358).

**PASSENGER FARES.** *See also* EXCURSION FARES.

Applications of Louisville & Southern Indiana Traction Co. and Louisville & Northern Ry. & Lighting Co., for increased passenger fares between Louisville, Ky., and Jeffersonville, Ind., and New Albany, Ind., respectively, granted to extent they do not exceed 7 cents. *Louisville Passenger Fares*, 366.

**PERCENTAGE RATES.**

Reasonable maximum rates between points within C. F. A. territory and between the two territories and between either of them and points in New England territory should not exceed 90 per cent of sixth-class rates. *Building and Roofing Paper and Paper Board Rates*, 84 (102).

A percentage relationship between lumber and related articles will effect a fairer distribution of transportation costs than flat differentials. *Rates on Lumber and Lumber Products*, 598 (617).

**PLACEMENT.** *See* DELIVERY.**POINTS OFF LINE.**

The Commission has power in a proper case to order carriers serving Kansas City, Mo., which do not serve Omaha, Nebr., to cease and desist from continuing a rate adjustment which unduly prejudices Omaha. *Commercial Club of Omaha v. B. & O. R. R. Co.*, 255 (264).

**POLICING.**

Defendants failed to properly police shipments of flour arriving at Philadelphia, Pa., for export, there stored, later removed to another point in Philadelphia for reconditioning, returned to defendant's pier, and subsequently exported. Charges provided by domestic tariff assessed but under the particular circumstances, export shipments. Reparation awarded. *Shane Bros. & Wilson Co. v. P. R. R. Co.*, 403.

**POMERENE ACT.** *See* BILLS OF LADING ACT.**POTENTIAL COMPETITION.** *See* COMPETITION.**POWER OF COMMISSION.** *See* JURISDICTION.**PREFERENCES AND PREJUDICES.** *See also* DISCRIMINATION.**In General:**

No carrier in the United States can unduly prejudice a traveler or a locality in this country merely because it is party to a joint arrangement for through carriage to an adjacent foreign country. *Commercial Club of Omaha v. B. & O. R. R. Co.*, 255 (258).

The prime object of all classification is to effect an equitable distribution of transportation costs and thus avoid rates which are unjustly prejudicial to certain articles and unduly preferential of others. *Rates on Lumber and Lumber Products*, 598 (607).

**Articles:**

Dried fruit: Rate on, in sacks, c. l., and in sacks and boxes, in mixed carloads, from California producing points to Boise, Idaho, via Ogden, Utah, not shown unreasonable or unduly prejudicial as compared with c. l. rate on the same commodity, in boxes. *Boise Commercial Club v. O. S. L. R. R. Co.*, 375.

## PREFERENCES AND PREJUDICES—Continued.

## Articles—Continued.

Veneer: Higher charges on veneer manufactured from ordinary woods than on lumber, and charges higher than lumber rates plus 15 per cent on veneer manufactured from woods of value, are unduly prejudicial to shippers of veneer and built-up wood. Rates on Lumber and Lumber Products, 598 (613).

Car furnishing: Allegation that cars furnished complainant were not proper cars for transporting milk and that complainant was unduly prejudiced and her competitors unduly preferred, not sustained. *Graustein v. B. & M. R. R.*, 269 (270, 279).

## Localities:

Boston, Mass.: Relation of rates to Boston on milk maintained by the M. C. in connection with the B. & M. from points in Maine, and by the B. & M. from points in Vermont, and by the Rutland and B. & M. from Vergennes and other points on the Rutland from March 8, 1916, to October 1, 1916, was unduly prejudicial to complainant to extent of \$8.46 per car. Reparation awarded. *Graustein v. B. & M. R. R.*, 269 (279).

California points: Proposed increased rates on hops from Oregon, Washington, and California points, were suspended as to Oregon and Washington points only. Suspended rates subsequently found justified. *Held*: Rates from California points during period of suspension found unduly preferential of Oregon and Washington points. Reparation awarded. *Horst Co. v. S. P. Co.*, 356.

## Chicago Stockyards:

Failure to absorb all charges for loading and unloading live stock at the Chicago stockyards, while absorbing all such charges at certain other markets, has not been shown to produce undue prejudice against shippers of live stock at the Chicago stockyard. Live Stock Loading and Unloading Charges, 209 (224).

In the absence of a showing of undue prejudice how much, if any, of the loading and unloading charges at the Chicago stockyards may properly be absorbed by the line-haul carriers is dependent upon the degree to which their interests are served in any particular instance. *Id.* (224).

## Colorado common-points:

Class rates between Denver and Pueblo and points in interior Kansas and Nebraska found unreasonable and unduly prejudicial to extent they exceed by more than 15 per cent those applied from Missouri River cities to points in Nebraska subject to the Missouri River-Colorado common-point rates as maxima. Public Utilities Commission of Colorado *v. A., T. & S. F. Ry. Co.*, 439 (452-453).

Class rates between Denver, Colo., and points grouped therewith and Galveston and points in Texas intermediate thereto found unreasonable and unduly prejudicial to extent they exceeded by more than 25 per cent the rates herein prescribed. *Id.* (460).

Class rates from Denver, Colo., and points grouped therewith to certain stations herein enumerated in New Mexico, Arizona, and Texas, on the A., T. & S. F.; S. F., P. & P.; and R. G., E. P. & S. F., found unreasonable and unduly prejudicial to extent they exceed by more than 25 per cent the rates herein prescribed. *Id.* (467).

Class rates from Denver, Colo., to points on the C. & N. W.; W. & N. W.; and C. & S., not found unreasonable or unlawful, but as to certain stations herein enumerated on the C., B. & Q. R. R., found unreasonable and unduly prejudicial to extent they exceed by more than 25 per cent rates herein prescribed. *Id.* (471).

## PREFERENCES AND PREJUDICES—Continued.

## Localities—Continued.

Harrisonburg branch, Southern Ry.: Rates and regulations on grain originating in c. f. a. territory, from points on the Harrisonburg branch of the Southern Railway, there milled and reshipped to Carolina territory, higher than from Lynchburg, Va., alleged to be unduly prejudicial, dismissed. *Harrisonburg Milling Co. v. A. A. R. R. Co.*, 63 (68).

Houston, Tex.: Rate on common window glass from Kansas points to, not shown unreasonable but found unduly prejudicial to Houston to extent it exceeded by more than 7 cents the rate in effect to Waco; and rates to to San Antonio, Tex., should not exceed the rate to Houston. Proper relationship of rates prescribed. *Bute Co. v. A., T. & S. F. Ry. Co.*, 380. Kansas City, Mo.:

Following *Wheeler Lumber, Bridge & Supply Co.*, 23 I. C. C., 514, rates on lumber and articles taking same rates, or rates related thereto, from Kansas City to Des Moines, Iowa, found unduly prejudicial to Kansas City to extent they exceed the rates from St. Louis, Mo., to Des Moines. *Wheeler Lumber Bridge & Supply Co. v. C., R. I. & P. Ry. Co.*, 370.

Combination rates on hay moving via the C., B. & Q. R. R., to Kansas City, Mo., there reconsigned to various destinations, not shown unreasonable or unduly prejudicial as compared with through rates maintained between same origin and destination points when moving through St. Joseph, Mo., and Omaha, Nebr. *Kansas City Hay Dealers Asso. v. C., B. & Q. R. R. Co.*, 408.

Kansas points: Rates on fresh apples from northeastern and Valley districts of Kansas, to Oklahoma and Texas, not shown unreasonable or prejudicial to Kansas or preferential of either Arkansas or Colorado. *Public Utilities Commission of Kansas v. A. & S. Ry. Co.*, 198 (206, 208).

Louisiana points: Rates on cotton from points on defendant's Eunice branch in Louisiana to New Orleans, La., for export or interstate movement, not found unreasonable or unduly prejudicial as compared with rates from Opelousas, La., which point is entitled to a somewhat lower rate due to its location. *Haas & Co. v. T. & P. Ry. Co.*, 527.

Madison, Ill.: Joint rates on croesties from points in Missouri to Madison, Ill., found unduly prejudicial to extent that they exceed rates from the same points to St. Louis by more than 1 cent per 100 pounds. *Kettle River Co. v. M. P. Ry. Co.*, 73 (83).

Mobridge, S. Dak.: Carload commodity rates on wholesale groceries from Chicago and Rock Island, Ill., and Duluth and St. Paul, Minn., to Mobridge, S. Dak., found unduly prejudicial to extent that the ratio of such commodity rates to the corresponding commodity rates to Aberdeen, S. Dak., exceeds the ratio of the corresponding fifth-class rates to Mobridge and Aberdeen. *Mobridge Grocery Co. v. C., M. & St. P. Ry. Co.*, 307 (315).

Natchez, Miss.:

Found to be subject to undue prejudice with respect to intrastate rates between western Louisiana points and interstate rates between western Louisiana points and southern Arkansas points. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (128).

Failure of carriers to accord Natchez joint rates and specific through rates to and from western Louisiana and southern Arkansas points in such manner and to the same extent as between western Louisiana points and between western Louisiana and southern Arkansas points found to subject Natchez to undue prejudice. *Id.* (128).

## PREFERENCES AND PREJUDICES—Continued.

## Localities—Continued.

## Natchez, Miss.—Continued.

Application of higher minimum charges on traffic from Natchez than are applied between points in Louisiana on and west of the Mississippi River found to be unduly prejudicial. *Id.* (128).

Class rates between Natchez, Miss., and Texas points found unreasonable and unduly prejudicial to extent that they exceed for like distances class rates maintained between Shreveport, La., and Texas points. *Natchez Chamber of Commerce v. A. H. T. Ry. Co.*, 558 (588).

Class rates between Natchez and Houston-Galveston group found unduly prejudicial in so far as they exceed for like distances the class rates maintained between Shreveport and Texas points in common-point territory. *Id.* (570).

Carload rates on livestock from Texas points to Natchez found unduly prejudicial to extent they exceeded for distances of 750 miles or less, rates maintained from Texas points to Shreveport, La., and for distances over 750 miles, the rates from same points to Shreveport by more than 6 cents. *Id.* (570-571).

Carload rates on salt from Grand Saline, Tex., to Natchez, Miss., found unduly prejudicial to extent that they exceed rates maintained from Grand Saline to Vicksburg, Miss., and New Orleans, La. *Id.* (571).

Carload rate on cement plaster from Acme and Plasterco, Tex., to Natchez found unduly prejudicial to extent it exceeded rates from same points to New Orleans and Vicksburg, and unreasonable prior and subsequent to June 25, 1918. *Id.* (572).

New England territory: Maintenance of different arbitraries over Maine junctions to, from trunk line territory than from c. f. a. territory is unduly prejudicial and preferential and should be adjusted so that same arbitraries should be added to make through rates from both territories. *Building and Roofing Paper and Paper Board Rates*, 84 (103).

New Orleans, La.: Carload minimum on sugar from New Orleans, La., and points taking same rates to Texas destinations, not shown unreasonable but found prejudicial to New Orleans and points taking same rates as compared with minimum from Sugarland, Tex. *New Orleans Joint Traffic Bureau v. A. & S. Ry. Co.*, 23.

Niles Center, Ill.: Rates on bituminous coal from points in Pennsylvania, West Virginia, Kentucky, Ohio, Indiana, and from Illinois mines via interstate routes to, found unreasonable and unduly prejudicial to Niles Center as compared with rates to points taking Chicago rates. Reasonable rates prescribed. Reparation denied. *Stielow Bros. Co. v. C. & N. W. Ry. Co.*, 339.

North Pacific coast terminals: Rates on crude sulphur from Bryan Mound and Freeport, Tex., and Sulphur Mines, La., to Pulp and Lebanon, Oreg., and Camas, Wash., not shown unreasonable or unduly prejudicial as compared with rates to California terminals. *Crown Willamette Paper Co. v. H. & B. V. Ry. Co.*, 176.

## Omaha, Nebr.:

Summer excursion fares, effective during 1917, between Omaha, Nebr., and points east of the Mississippi River and north of the Ohio and Potomac rivers, and in the Dominion of Canada north of that territory, *Held*: To have been unduly prejudicial of O. & N. to the preference of Kansas City and St. Joseph, Mo. *Commercial Club of Omaha v. B. & O. R. R. Co.*, 255.

## PREFERENCES AND PREJUDICES—Continued.

## Localities—Continued.

## Omaha, Nebr.—Continued.

The Commission has power in a proper case to order carriers serving Kansas City, Mo., which do not serve Omaha, Nebr., to cease and desist from continuing a rate adjustment which unduly prejudices Omaha. *Id.* (264).

Patton Switch, Sunlight, and Ford Switch, Ala.: Combination rates on lumber from, to interstate destinations found unduly prejudicial to extent they exceeded rates maintained from Manchester, Ala., from which points the main line basis of rates apply. *Cleveland Lumber Co. v. A. C. R. R. Co.*, 159.

Plasterco, Tex.: Rates on cement plaster from, to various interstate destinations, and to points on the lines of the Santa Fe and Rock Island, found unduly prejudicial to Plasterco and unduly preferential of Acme and other competing points. Reparation denied. *Texas Cement Plaster Co. v. A., T. & S. F. Ry. Co.*, 293.

Portland, Oreg.: Rates on salt from Portland, Oreg., to points in Washington, Idaho, and Montana, and to points in Oregon over interstate routes, not shown unjustly discriminatory or unduly prejudicial to Portland as compared with rates from Saltair, Utah. *Portland Traffic & Transp. Assn. v. C., M. & St. P. Ry. Co.*, 169.

## Rock Hill, S. C.:

Following *Spartanburg Case*, 34 I. C. C., 484, rates on vehicle parts from trunk line and New England territories to, not shown unduly prejudicial of competitive points in Virginia, North Carolina, and Georgia, but found unreasonable to extent they exceeded the aggregate of intermediate rates. Reparation denied. *Rock Hill Buggy Co. (Inc.) v. S. Ry. Co.*, 583 (586).

Rates on vehicle parts from c. f. a. territory and certain Ohio River crossings to Rock Hill, S. C., not found unreasonable but found unduly prejudicial to Rock Hill to extent that factors south of the Virginia cities exceeded by more than specified amounts the factors applied on like traffic to Charlotte and Monroe. N. C. *Id.* (588, 589).

St. Louis and East St. Louis: Increased rates on crossties to Chicago, Ill., from, when the latter are used as components of through rates on interstate shipments, found not justified and to be unduly preferential of Thebes, Ill., and other lower river crossings. *Kettle River Co. v. M. P. Ry. Co.*, 73 (83).

Salt Lake City and Ogden, Utah: The mere showing that in certain instances lower charges applied on self-propelling vehicles and parts to Provo, Utah, than to Salt Lake City and Ogden is not sufficient to show that the higher charges to the latter points were unduly prejudicial. *Alkire-Smith Auto Co. v. A., T. & S. F. Ry. Co.*, 507 (512).

Washington Western Ry. points: Rates on lumber and forest products from, to interstate destinations found unreasonable and unduly prejudicial to extent they exceeded the coast-group basis of rates. Reparation awarded. *Three Lakes Lumber Co. v. W. W. Ry. Co.*, 42 (46).

Western Kentucky: Rates on bituminous coal from points on the L. & N. R. R. in western Kentucky to Cincinnati found unduly prejudicial to the extent they exceed rates from the Jellico-Middlesboro group in eastern Kentucky and Tennessee to Cincinnati by more than 15 cents per ton. *Ohio Valley Coal Operators Assn. v. L. & N. R. R. Co.*, 187 (196).

## PREFERENCES AND PREJUDICES—Continued.

## Persons:

Allegation that complainant was denied and her competitors furnished receiving and loading stations for shipments of milk with the result that complainant was unduly prejudiced and her competitors unduly preferred, not sustained. *Graustein v. B. & M. R. R.*, 269 (270, 279).

Allegation that tariff rule providing for billing at regular tariff rates, applicable to new or newly acquired empty tank cars, on their own wheels, when moved empty to home or loading point, is unduly prejudicial, *Held*: Rule open to all shippers alike, and there is nothing to show that any shipper has received any undue advantage over complainant. *Chanute Refining Co. v. A., T. & S. F. Ry. Co.*, 593 (596).

Rail and water: Rate legally applicable on lumber from Westville, S. C., to Bath Beach, N. Y., not shown unreasonable or unduly prejudicial as compared with joint rate on the water-competitive basis. *Tweed Lumber Co. v. S. Ry. Co.*, 493.

State and interstate: Proportional interstate rates on crossties from points in Missouri to St. Louis, Mo., found unduly prejudicial to extent they exceeded rates from same points to St. Louis on intrastate shipments. *Kettle River Co. v. M. P. Ry. Co.*, 73 (82).

Train service: Contention that the train service furnished complainant in the transportation of milk to Boston, Mass., from Vergennes and Brandon, Vt., was unduly preferential of her competitors and prejudicial to complainant, not sustained. *Graustein v. B. & M. R. R.*, 269 (270, 278).

## PREPAYMENT.

A primary right of carrier is that of reasonable compensation for service rendered and it is entitled to assure itself of such compensation by demanding it in advance. *Bills of Lading*, 671 (721).

Consignor being the one with whom contract of transportation is made is originally liable for carrier's charges and unless specifically exempted, the carrier is entitled to look to consignor for charges. *Id.* (721).

PRICE. *See also* VALUE.

A few cents difference in freight charges may determine a sale, and under such circumstances uniformity of rates is as of vital importance as the amount of them. *Building and Roofing Paper and Paper Board Rates*, 84 (101).

Car loading of different commodities is often determined by commercial units of sale. *Rates on Lumber and Lumber Products*, 598 (618).

## PRIMARY MARKETS.

Principal live stock markets named. *Live Stock Loading and Unloading Charges*, 209 (218).

PRIVATE CARS. *See* REFRIGERATOR CARS.

## PRIVATE TRACKS.

Defined. *Bills of Lading*, 671 (715).

## PROFIT.

Defendants advanced rates, maintaining differential to conform with Commission's finding in original report, 40 I. C. C., 291. Advanced rates suspended and subsequently became effective. *Held*: Reparation for loss of trade and reduction in profits during interim, denied. *Kerr & Co. v. S. S. Ry. Co.*, 287.

PROOF. *See* BURDEN OF PROOF.

## PROPORTIONAL RATES.

Proportional interstate rates on crossties from points in Missouri to St. Louis, Mo., found unduly prejudicial to extent they exceed rates from same points to St. Louis on intrastate shipments. *Kettle River Co. v. M. P. Ry. Co.*, 73 (82).



**RAIL-AND-WATER.**

Ocean-rail and rail-ocean-rail class and commodity rates from Atlantic seaboard territory to Colorado common-points via Galveston, Tex., not found unreasonable or unduly prejudicial, except to extent they exceed combination rates maintained through the port of Galveston. Public Utilities Commission of Colorado *v. A. & T. & S. F. Ry. Co.*, 439 (462).

Rates on pig iron from southern blast furnaces to interior New England points, between April 17, 1910, and June 25, 1918, exceeded rates based on \$4.50 per long ton from the Birmingham, Ala., district to Boston, Mass., or Providence, R. I., plus handling charge of 40 cents per long ton, plus 75 per cent of local rates beyond, and exceeded rates based on established differential relationship to rates from the Birmingham, Ala., district. Reparation awarded. Sloss-Sheffield Steel & Iron Co. *v. L. & N. R. R. Co.*, 576 (578—579).

**RATE WALL.**

No effort on part of Louisiana authorities to build, around state in the interest of its shippers, or to obstruct the free movement of traffic. Natchez Chamber of Commerce *v. L. & A. Ry. Co.*, 105 (116).

**REARGUMENT.**

On horses from Pittsburgh, Pa., to Jersey City, N. J., no follow-lot rule in effect. Commercial horse cars ordered. Ordinary stock cars of smaller capacity accepted. Upon reargument, *Held*: Express charges unreasonable to extent they exceeded those that would have accrued had a follow-lot rule been in effect. Reparation awarded. Northwestern Trading Co. (Inc.) *v. Adams Exp. Co.*, 552.

**REASONABLENESS OF RATES.** See MAXIMUM RATES; MEASURE OF RATES.

**RECONSIDERATION.** See REARGUMENT; REHEARING; SUPPLEMENTAL REPORT.

**RECONSIGNMENT.** See also DIVERSION.

Petition for increased divisions of rates on shipment of lumber, originating south of the Ohio or west of the Mississippi and stopped at Buffalo, East Buffalo, Black Rock, or North Tonawanda, N. Y., for transit service and reconsignment, denied. Lumber Transit Privileges at Buffalo, N. Y., 31 (38).

On hay from Breckenridge, Mich., to Florence, S. C., there refused and reconsigned to Charleston, S. C., a farther distant point, lower rate in effect to Charleston. Tariff provided "Where reconsignment is made after arrival at first destination, and rate to new destination is lower, the rate to first destination will be charged." *Held*: Rate assessed illegal to extent it exceeded rate to first destination. Reparation awarded. Smith-Connor Hay & Grain Co. *v. A. C. L. R. R. Co.*, 331.

Combination rates on hay moving via the C., B. & Q. R. R., to Kansas City, Mo., there reconsigned to various destinations, not shown unreasonable or unduly prejudicial as compared with through rates maintained between same origin and destination points when moving through St. Joseph, Mo., and Omaha, Nebr. Kansas City Hay Dealers Asso. *v. C., B. & Q. R. R. Co.*, 408.

**REDUCTION IN RATES.**

By Carriers:

Rate legally applicable on crude oil, in tank-car loads, from Miami, W. Va., to Toledo, Ohio, exceeded lower rate subsequently established. Reparation awarded. Sun Co. *v. T. & O. C. Ry. Co.*, 12.

Fifth-class rate on news print paper from San Francisco, Calif., to Dallas, Tex., exceeded subsequently established commodity rate. Reparation awarded. Southwestern Paper Co. *v. C., R. I. & P. Ry. Co.*, 39.

**REDUCTION IN RATES—Continued.****By Carriers—Continued.**

Rate on cotton seed from Shreveport, La., to Vicksburg, Miss., exceeded lower commodity rate subsequently established. Reparation awarded. *Humphreys-Godwin Co. v. V. & P. Ry. Co.*, 148.

Charge of \$6 per car for switching traffic between complainant's plant and point of interchange with the B. & O. R. R., at Hutton, Md., found unreasonable to extent it exceeded \$4 per car, subsequently established and prescribed herein as maximum for the future. Reparation awarded. *Tioga Tanning Co. v. Preston R. R. Co.*, 252.

Fifth-class rate on old rails and fastenings from New Madrid, Mo., to Madison, Ill., exceeded lower commodity rate subsequently established. Reparation awarded. *National Steel Rail Co. v. St. L.-S. F. Ry. Co.*, 325.

Rate and minimum weight on common brick from Chattanooga, Tenn., to Fort Payne, Ala., subsequently reduced to the rate and minimum applicable to Birmingham, Ala., a farther distant point, found unreasonable to that extent. Reparation awarded. *Chattanooga River Brick Co. v. A. G. S. R. R. Co.*, 337.

On old rails and angle bars from Jersey City, N. J., to Louin, Miss., charges found illegal and unreasonable to extent they exceeded the subsequently established commodity rates for the movement from New York to Louin. Reparation awarded. *Zelnicker Supply Co. v. M. S. S. Co.*, 363.

The voluntary reduction of a rate does not of itself constitute a basis for an award of reparation. *Aetna Explosives Co. v. A. G. S. R. R. Co.*, 423 (425).

On nitrating acid, from Louviers, Colo., to Hopewell, Va., factor from Louviers to St. Louis was reduced to equal rate applicable to sulphuric acid. Reparation awarded. *Du Pont de Nemours Powder Co. v. D. & R. G. R. R. Co.*, 427.

Rates on citrus fruits from points in Florida to destinations in Tennessee exceeded those subsequently established in accordance with the Commission's findings in *Fruits from Florida*, 43 I. C. C., 595. Reparation awarded. *King & Co. v. N. C. & St. L. Ry.*, 481.

Rate on sulphuric acid, in tank-car loads, from New Orleans, La., to Oakdale, Pa., exceeded lower rate subsequently established. Reparation awarded. *Aetna Explosives Co. v. Director General*, 505.

Rates on sulphur from Bryan Mound, Tex., to Connable, Ala., found on rehearing to have been unreasonable to extent they exceeded rates subsequently established. Reparation awarded. *Du Pont de Nemours Powder Co. v. H. & B. V. Ry. Co.*, 538.

Rate on acid phosphate from Carteret, N. J., to Philadelphia, Pa., exceeded lower commodity rate subsequently established. Reparation awarded. *American Agricultural Chemical Co. v. C. R. R. Co. of N. J.*, 550.

**By Commission:**

Following cases cited herein, combination rate legally applicable on high explosives from Fayville, Ill., to Atlanta, Mich., found unreasonable to extent it exceeded first-class rate in effect. Reparation awarded. *Aetna Explosives Co. v. C. & E. I. R. R. Co.*, 26.

Rates on flour from Edinburg, Va., milled from wheat originating in c. f. a. territory, should be reduced to basis of rates on like traffic from other points on the Harrisonburg branch of the Southern Ry., southwest of Strasburg Junction. *Harrisonburg Milling Co. v. A. A. R. R. Co.*, 63 (68).

## REDUCTION IN RATES—Continued.

## By Commission—Continued.

Minimum charges on high explosives, l. c. l., from Fayville, Ill., to interstate destinations served by the Grand Trunk Western Ry., exceeded charges maintained by other carriers throughout the same general territory. Reasonable joint minimum prescribed. *Aetna Explosives Co. v. C. & E. I. R. Co.*, 393.

Class rates on crushed stone from Lambertville, N. J., to Port Ivory, N. Y., found unreasonable as compared with distance rates prescribed in *Birdsboro Stone Co.*, 49 I. C. C., 681. Reasonable rate prescribed and reparation awarded. *Procter & Gamble Mfg. Co. v. P. R. R. Co.*, 406.

Increased ratings in the official classification on oil, gas, and electric lamps, with globes or shades of the framed glass type with glass in frames or detached and in the same outer container, and present ratings on lamps complete with globes or shades of one piece of glass, found not justified and reasonable ratings prescribed. *Larkin Co. v. E. R. R. Co.*, 413 (418).

Rates legally applicable on sulphuric acid in tank-car loads, from points in Mississippi, Alabama, and Georgia, to Copperhill, Tenn., exceeded rates based on the application of the southern distance scale, modified in conformity with *Sulphuric Acid from New Orleans, La.*, 42 I. C. C., 200. Reasonable maximum rates prescribed and reparation awarded. *Aetna Explosives Co. v. A. G. S. R. R. Co.*, 423.

Rates on plaster from Gypsum, Utah, to Sacramento and San Francisco, Calif., and intermediate points on the lines of the Santa Fe and Southern Pacific, found unjust and unreasonable as compared with rates from competitive points, and with rates on other low grade commodities between other points for similar distances. Reasonable rates prescribed. *Nephi Plaster & Mfg. Co. v. A., T. & S. F. Ry. Co.*, 433.

Class rates on flat wire braid from Niles, Mich., and Weehawken, N. J., to San Diego, Calif., found unreasonable to extent they exceeded fourth-class, c. l., and first-class, l. c. l., from Niles, and first-class, l. c. l., from Weehawken. Reasonable rates prescribed and reparation awarded. *Savage Tire Co. v. A., T. & S. F. Ry. Co.*, 499.

Rate on portland cement from Richard City, Tenn., to Jennings, La., exceeded rate to points in the Crowley-Opelousas-Cheneyville group. Reparation awarded. *Dixie Portland Cement Co. v. N., O. & St. L. Ry.*, 517.

Rate on iron and iron articles from Laredo to San Antonio, Tex., originating at Monterey, Mex., exceeded rates prescribed following rehearing in *Railroad Commission of Louisiana*, 48 I. C. C., 312, and subsequently established. *San Antonio Freight Bureau v. I. & G. N. Ry. Co.*, 521.

## REFRIGERATOR CARS.

On complaint alleging less than reasonable allowances for use of privately owned refrigerator cars to transport fresh meat and packing-house products within the territory west of El Paso, Tex., Albuquerque, N. Mex., and Salt Lake City and Ogden, Utah, *Held*: Allowances should be 1 cent a mile on the loaded and empty movement. *Armour & Co. v. E. P. & S. W. Co.*, 240.

Allowances paid by carriers in transcontinental zone for loaded and empty movement of privately owned refrigerator cars compared with that regarded as proper throughout the remainder of the United States. *Id.* (241).

Construction of special type of, for safe transportation of fresh meat and sweet pickled meat, described. *Id.* (242).

Empty movement of, on the Santa Fe system for the year 1917, shown. *Id.* (243).

Number operated by the Santa Fe, Southern Pacific, and Union Pacific, shown. *Id.* (244).

**REFRIGERATOR CARS—Continued.**

Commission has power to prescribe reasonable compensation to be paid for use of cars not owned by common carriers, under section 1, as amended, and section 15. *Id.* (245, 247).

Defendants make rates for transportation of fresh meats and pay shippers for furnishing refrigerator cars. Argument that no carrier ought to be required to furnish suitable cars in which to transport such articles, *Held*: Defendants may not be heard to assert that they have no duty in the premises. *Id.* (247).

**REFUND.** *See* **OVERCHARGES.**

**REFUSED SHIPMENT.**

Shipments of steel rails refused and stored on defendant's right of way at Twin Falls, Idaho. *Held*: Storage charges assessed found legally applicable but unreasonable to extent they exceeded \$1 per car per day, following *Parry & Co.*, 29 I. C. C., 559, and *Levering Bros.*, 38 I. C. C., 349. *Perrine v. O. S. L. R. R. Co.*, 400.

Section 4, proposed new provision for notice to consignor and consignee in the case of loss resulting in nondelivery, and to the consignor in the case of goods refused or unclaimed at destination, disapproved. *Bills of Lading*, 671 (717-720).

**REHEARING.** *See also* **REARGUMENT; SUPPLEMENTAL REPORT.**

Upon rehearing, rates on sulphur from Bryan Mound, Tex., to Connable Ala., found unreasonable to extent they exceeded those subsequently established. Reparation awarded. *Du Pont De Nemours Powder Co. v. H. & B. V. Ry. Co.*, 538.

**RELATIONSHIP OF RATES.**

Shippers of lumber on the Washington Western Ry., found to be entitled to the same basis of rates as maintained from points taking the coast-group basis. *Three Lakes Lumber Co. v. W. W. Ry. Co.*, 42 (44).

San Antonio, Tex., found to be entitled to the same basis of rates on common window glass from Kansas points as are maintained to Houston, Tex. *Bute Co. v. A., T. & S. F. Ry. Co.*, 380.

Rates on lumber from Miley, S. C., to Norfolk, Va., and North Philadelphia and Chester, Pa., are not fixed with any relation to the rates from Hampton, S. C., and differentials maintained from Miley during specific periods more than 2 cents over the rates from Hampton, not shown unreasonable. *Bright-Brooks Lumber Co. v. H. & B. R. R. & L. Co.*, 545.

Water, carrier, and market competition have not affected lumber products differently from lumber to a degree sufficient to prevent the maintenance of a close rate relationship. *Rates on Lumber and Lumber Products*, 598 (605).

Rates made without the observance of any particular rate relationship permit more readily the charging in each particular instance of what the traffic can bear, irrespective of the reasonableness of the charge, but that is obviously not a result which it is desirable to promote. *Id.* (612).

Rather than reflect value in a rate relationship between lumber and lumber products, this element should be considered only in fixing the basic lumber rate and its relationship to rates on commodities not so intimately related to lumber. *Id.* (615).

In making commodity rates the rate maker must observe the law, which requires that rates shall be reasonable in and of themselves and also reasonable by relation. *Id.* (628).

**RELATIVE ADJUSTMENT.** *See also* **ADJUSTMENT OF RATES; RELATIVE RATES.**

Shippers of lumber on the Washington Western Ry., found to be entitled to the same basis of rates maintained from points taking the coast-group basis. *Three Lakes Lumber Co. v. W. W. Ry. Co.*, 42 (44).

**RELATIVE ADJUSTMENT—Continued.**

Class rates between Chicago, Ill., the Mississippi and Missouri rivers, on the one hand, and Colorado common points, on the other, not found unreasonable or unduly prejudicial, and adoption of New York-Chicago scale as basis for construction of rates, found not warranted. Public Utilities Commission of Colorado *v. A. T. & S. F. Ry. Co.*, 439 (446, 448).

Certain commodity rates from Chicago and the Mississippi and Missouri rivers to Colorado common points appear relatively high by comparison with rates to Utah common points and assumption that commodity rates which are certain percentages of class rates are entitled to take the same percentages of a reduced class rate, not found an adequate basis for a readjustment. *Id.* (448-449).

Class rates between Denver and Pueblo and points in interior Kansas and Nebraska found unreasonable and unduly prejudicial to extent they exceed by more than 15 per cent those applied for like distances from Missouri River cities to points in Nebraska subject to the Missouri River-Colorado common-point rates as maxima. *Id.* (452-453).

**RELATIVE RATES. See also PREFERENCES AND PREJUDICES.**

Copperhill, Tenn.: Rates legally applicable on sulphuric acid in tank-car loads from points in Mississippi, Alabama, and Georgia, to Copperhill, Tenn., compared with rates on basis of southern distance scale, rates subsequently established, and rates in the opposite direction. *Aetna Explosives Co. v. A. G. S. R. R. Co.*, 423 (424).

Kentucky mines: Statement showing the rates and revenues on bituminous coal from western Kentucky mines as compared with eastern Kentucky mines. *Ohio Valley Coal Operators Assn. v. L. & N. R. R. Co.*, 187 (191).

New Orleans, La.: On scrap steel rails from New Orleans, La., to Huntington, W. Va., contention that Huntington should be accorded the same rate as Cincinnati, Ohio, not sustained. *West Virginia Rail Co. v. S. Ry. Co.*, 419 (422).

Vicksburg, Miss.: Rate on cotton seed from Shreveport, La., to, found unreasonable as compared with rates from points in Arkansas to Memphis, Tenn. Reparation awarded. *Humphreys-Godwin Co. v. V., S. & P. Ry. Co.*, 148 (149).

**RELEASED RATES. See also CUMMINS AMENDMENT.**

Section 2, clause 3. measure of carrier's liability for loss and damage. Proposed rule limiting carrier's liability when property shipped under rates dependent upon declared or agreed values found unlawful and should be eliminated. *Bills of Lading*, 671 (708-712).

**REMOVAL OF FREIGHT.**

What constitutes a reasonable time for removal of goods is a question of fact to be determined by the particular circumstances of the case. *Bills of Lading*, 671 (696).

Massachusetts, New Hampshire, and New York rules governing, compared. *Id.* (696).

Carriers may avail themselves of full free time before removal of goods and carrier is not released from liability while goods are in its custody. *Id.* (702).

**REOPENING. See REARGUMENT; REHEARING; SUPPLEMENTAL REPORT.****REPARATION. See DAMAGES.****RESTORED RATES.**

Rates legally applicable on news print paper from Niagara Falls, N. Y., to Little Rock and Fort Smith, Ark., except when moving via Lehigh Valley as initial carrier, exceeded alternative rates in effect prior to movement and subsequently restored. Reparation awarded. *International Paper Co. v. L. E. & W. R. R. Co.*, 514.

**RETURN.**

Justification for increased fares, based upon the theory that carriers are entitled to a reasonable return on the value of property, can not be accepted by the Commission. *Louisville Passenger Fares*, 366 (368-369).

**RETURNED EMPTIES.**

Tariff rule, providing for application of 15 per cent of appropriate class rates, from Clifton, Ariz., to El Paso, Tex., on shipments of returned empty beer containers from Clifton to original consignor of the filled containers, at St. Louis, Mo., construed. *Anheuser-Busch Brewing Asso. v. C., R. I. & P. Ry. Co.*, 555.

**REVENUE.**

Figures showing that the average earnings of a carrier include all traffic, whether through or local, light or heavy, carload or less-than-carload. *Building and Roofing Paper and Paper Board Rates*, 84 (97).

There is validity in contention that a declining rate per ton-mile as distance increases is normally only applicable where the transportation conditions for the entire haul are substantially similar, and that where the movement is from a low to a high or to a higher rate territory, ton-mile earnings tend to increase as the distance increases. *Mobridge Grocery Co. v. C., M. & St. P. Ry. Co.*, 307 (310).

Table of actual shipments to the east and southeast via the Northern Pacific, showing the revenue on gross weight of load and cars of lumber as compared with revenue on double and triple loads of piles and pilings. *Rates on Lumber and Lumber Products*, 598 (626).

**RIGHT OF WAY.**

Shipments of steel rails refused and stored on defendant's right of way at Twin Falls, Idaho. *Held*: Storage charges assessed found legally applicable but unreasonable to extent they exceeded \$1 per car per day, following *Parry & Co.*, 29 I. C. C., 559, and *Levering Bros.*, 38 I. C. C., 349. *Perrine v. O. S. L. R. R. Co.*, 400.

**RIOTS. See DELAY.****RISK.**

The fact that the rate relationship of lumber and lumber products should be based upon their relative car loading, does not lead to the conclusion that value and risk should never be regarded as determinative classification factors. *Rates on Lumber and Lumber Products*, 598 (617).

Value and risk in most instances do not afford a basis for a differentiation in rates between lumber and most lumber products. *Id.* (618).

**RIVER CROSSINGS.**

Addition of 20 constructive miles proposed by carriers to compensate them for expenses incurred in crossing the Mississippi River at lower crossings, approved. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (125, 129).

The fixing of a distance scale approximating or based upon *Shreveport Case* scale for uniform application at lower Mississippi River crossings will more equitably align, and better enable them to stand on the same competitive footing, participating in the traffic upon their respective merits. *Id.* (121).

Statement showing Mississippi River crossing charges proposed by carriers to apply at Natchez, as compared with bridge tolls suggested by carriers to apply on Memphis traffic for same distance into Arkansas, in Docket 7304. *Id.* (125, 140).

**ROUTES. See also CIRCUITOUS ROUTES.**

Joint rate on bituminous coal from Rapson, Colo., to points in Oklahoma and Kansas, via Amarillo, Tex., found unreasonable to extent they exceeded by more than 50 cents per net ton joint rate maintained from Rapson by the C. & S. to points on the C., R. I. & P., between Earlsboro and Ardmore, Okla. *Rapson Coal Mining Co. v. C. & S. Ry. Co.*, 164.

## ROUTES—Continued.

If cars had not been specifically routed by complainant, lowest combination of rates would have applied, but having routed through particular junctions, it can not complain because a lower rate applied via some other junction. *Aetna Explosives Co. v. A. G. S. R. R. Co.*, 235 (238).

On semianthracite coal from Hackett, Ark., to Cedar Rapids, Nebr., shipment moved as routed by shipper. Legally applicable combination rate assessed not shown unreasonable or unduly prejudicial as compared with lower combination rate in effect via another route. *National Supply Co. v. U. P. R. R. Co.*, 379.

The existence of a lower rate over routes other than route of movement does not of itself warrant a condemnation of the rate charged. *Id.* (379).

Cedar posts from Spur 325, near Boy River, Minn., to Morrison, Ill., moved as routed by shipper, by way of Minnesota Transfer, Minn. Combination rate assessed. Lower joint rate applied when waybilled by way of Waukecha, Wis. *Held*: Rates charged legally applicable and not shown unreasonable. *Page & Hill Co. v. C., St. P., M. & O. Ry. Co.*, 495.

On potatoes from Duluth to Minneapolis, Minn., reshipped to Centralia, Ill., combination rates assessed. Lower joint rate available via route other than route of movement. *Held*: Combination rate assessed not unreasonable. *Gamble-Robinson Co. v. C., St. P., M. & O. Ry. Co.*, 523.

The fact that a rate between two points is higher over one route than over another, does not prove that the higher rate is unreasonable. *Id.* (524).

## ROUTING.

Where the routing of traffic is consistent with transportation efficiency, and the transit service, all things considered, can be justified as a public benefit, the service as a whole should be continued only under rates and charges which are compensatory to all of the carriers participating therein. *Lumber Transit Privileges at Buffalo, N. Y.*, 31 (38).

ROUTING INSTRUCTIONS. *See also* MISROUTING.

Cedar posts from Spur 325, near Boy River, Minn., to Morrison, Ill., moved as routed by shipper, by way of Minnesota Transfer, Minn. Combination rates assessed. Lower joint rate applied when waybilled by way of Waukecha, Wis. *Held*: Rates charged legally applicable and not shown unreasonable. *Page & Hill Co. v. C., St. P., M. & O. Ry. Co.*, 495.

RULES OF PRACTICE. *See* ADMINISTRATIVE RULING.SCALE OF RATES. *See also* DISTANCE SCALE.

Record insufficient for determination of reasonableness of scale of rates suggested by Director General for general adoption in Louisiana and northern Arkansas slightly lower than the Shreveport scale increased by 25 per cent. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (131).

Class rate scales approved by Commission in *Shreveport* and other cases, Appendix 1. *Id.* (119, 131, 133—134).

SCRAP IRON. *See* JUNK.

## SEASONAL TRAFFIC.

Contention that the entire season of navigation at Lake Erie ports should be treated as one period for averaging car detention, *Held*: Nothing warrants a different conclusion than stated in *Red Ash Coal Co.*, 37 I. C. C., 400. *Cabin Creek Consolidated Coal Co. v. C., H. & D. Ry. Co.*, 181 (182-183).

## SECTION 1.

Does not attempt to particularize as between one variety of freight and another and to provide for a greater degree of responsibility or an added duty with respect to carload shipments of live stock than exists as to other freight. *Live Stock Loading and Unloading Charges*, 209 (217).

## SECTION 1—Continued.

Nothing stated in, which in any manner sets apart shipments of live stock from shipments of other freight unless it be that it is impracticable to secure their handling and delivery safely and promptly unless the carriers do the loading and unloading. *Id.* (217).

As amended, confers power upon the Commission to prescribe reasonable compensation for use of privately owned refrigerator cars. *Armour & Co. v. E. P. & S. W. Co.*, 240 (245, 247).

The Commission is empowered, under sections 1, 3, and 15, to effect a rate relationship between lumber and lumber products. Rates on Lumber and Lumber Products, 598 (603).

Duty of common carriers under amendment to, effective June 18, 1910, governing bills of lading. Bills of Lading, 671 (686).

Term "transportation" as used in, construed by the courts. *Id.* (699).

Transportation of traffic from an inland point to port of export, for export, whether performed wholly within confines of the state in which it originates or not and whether the traffic be carried on local or through bills of lading is subject to all provisions of section 1. *Id.* (724).

Relative to water carriers, quoted. *Id.* (724-725.).

SECTION 2. *See* DISCRIMINATION.SECTION 3. *See also* PREFERENCES AND PREJUDICES.

The Commission is empowered, under sections 1, 3, and 15, to effect a rate relationship between lumber and lumber products. Rates on Lumber and Lumber Products, 598 (603).

SECTION 4. *See also* LONG AND SHORT HAUL; THROUGH AND LOCAL.

Since fourth section applications involve the rates on all traffic, including the general class scale, and not only the rates in issue, action on them will be deferred until a full hearing has been had of the whole question in its broader aspect. Public Utilities Commission of Kansas *v. A. & S. Ry. Co.*, 198 (208).

## SECTION 5.

Relative to water carriers, quoted. Bills of Lading, 671 (725).

## SECTION 6.

Construed. Live Stock Loading and Unloading Charges, 209 (222).

Relative to water carriers, quoted. Bills of Lading, 671 (725).

## SECTION 10.

Declarations or agreements limiting liability under the Cummins amendment shall not be deemed to be in violation of section 10 of the act. Bills of Lading, 671 (685).

## SECTION 12.

Defining powers and authority of the Commission, quoted. Bills of Lading, 671 (685).

SECTION 15. *See also* APPLICATION.

Confers power upon the Commission to prescribe reasonable compensation for use of cars not owned by common carriers. *Armour & Co. v. E. P. & S. W. Co.*, 240 (247).

The Commission is empowered, under sections 1, 3, and 15, to effect a rate relationship between lumber and lumber products. Rates on Lumber and Lumber Products, 598 (603).

Commission given jurisdiction over bills of lading by provisions of. *Id.* (686).

SHORT LINE. *See also* TAP LINE.

Increased rates on interstate traffic to and from points on the Northampton & Bath R. R., resulting from the cancellation of absorption of N. & B. charges, found unreasonable to extent they exceeded those maintained to and from the junction points. Reparation awarded. *Atlas Portland Cement Co. v. N. & B. R. R. Co.*, 387.



**"SHORT-LINE WORKABLE ROUTE."**

Construed. *Western Cement Rates*, 225 (227).

**SHREVEPORT TRIANGLE.**

No longer justification for maintaining the Shreveport triangle group at equal rates. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (128-129).

Map and description. *Id.* (110, 122, 123).

**SHRINKAGE.**

Slight shrinkage in weight of grain usually occurs under ordinary transportation conditions and allowances are made therefor in commercial transactions. *Bills of Lading*, 671 (692).

**SPECIAL EQUIPMENT.** *See also REFRIGERATOR CARS.*

Commission no power to require carriers to placard cars, run special trains, or to equip cars with special devices for transportation of eggs. *National Poultry, Butter & Egg Asso. v. N. Y. C. R. R. Co.*, 47 (59).

**SPECIAL RATES.**

Special iron rates from Cincinnati and Cleveland, Ohio, to Rock Hill, S. C., not shown to have been unreasonable or unduly prejudicial. *Rock Hill Buggy Co. (Inc.) v. S. Ry. Co.*, 583 (590).

**SPREAD IN RATES.**

On bar iron, c. l., from Pittsburgh, Pa., and on carriage dashes, any quantity, from Buffalo, N. Y. to Rock Hill, S. C., spread in rates previously in effect, were maintained following increases, effective June 25, 1918. *Held: Rates not found unreasonable or unduly prejudicial. Rock Hill Buggy Co. (Inc.) v. S. Ry. Co.*, 583 (590).

Class rates uniformly present wider spreads for the longer than for shorter distances, and in many cases follow strictly for all distances, and in others approximately a percentage relation between the classes. *Rates on Lumber and Lumber Products*, 598 (617).

**STATE AND INTERSTATE.**

Proportional interstate rates on coasties from points in Missouri to St. Louis, Mo., found unduly prejudicial to extent they exceeded rates from same points to St. Louis on intrastate shipments. *Kettle River Co. v. M. P. Ry. Co.*, 73 (82).

Lower rates caused by water competition, which controls in whole or to any considerable extent the measure of the rail rates within the state and is not similarly forceful in its effect upon interstate rates are not necessarily violative of the act. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (116).

Natchez, Miss., found to be subject to undue prejudice with respect to intrastate rates between western Louisiana points and interstate rates between western Louisiana points and southern Arkansas points. *Id.* (128).

**STATE RATES.**

No part of the Commission's duty to inquire into the reasonableness of rates prescribed by state Commission for intrastate application. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (116).

**STATISTICS.**

Comparison of statistics taken from *Statistics of Railways in the United States* for the fiscal year ended June 30, 1915. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 105 (126, 141).

**STATUTE OF LIMITATIONS.** *See LIMITATION OF ACTION.***STOCKYARDS.**

The Chicago stockyards are the terminals for receipt and delivery of live stock of the railroad utilizing them. *Live Stock Loading and Unloading Charges*, 209 (224).

History of the Chicago Stockyards. *Id.* (210).

**STOCKYARDS—Continued.**

None of the line-haul carriers reaches the Chicago stockyards with its own rails, but all utilize the tracks of the Chicago Junction Railway, for which they pay a trackage charge. *Id.* (219).

**STOPPAGE IN TRANSIT.**

Petition for increased divisions of rates on shipments of lumber, originating south of the Ohio or west of the Mississippi and stopped at Buffalo, East Buffalo, Black Rock, or North Tonawanda, N. Y., for transit service and re-shipment, denied. *Lumber Transit Privileges at Buffalo, N. Y.*, 31 (38).

The holding of freight at owner's orders is not accessory to the transportation. *Bills of Lading*, 671 (705).

When goods are merely delivered to a carrier or deposited in its warehouse and are not to be transported until further orders from the owner, the carrier's liability is that of a warehouseman or bailee only. *Id.* (704, 705).

**STORAGE.**

Storing goods in transit by carrier at intermediate points because of interrupted transportation should be held to be a mere incident to the transportation and under protection of the rule which makes the carrier liable as an insurer from the time of transfer to the first carrier until delivered at the end of the route. *Bills of Lading*, 671 (704).

When goods are merely delivered to a carrier or deposited in its warehouse and are not to be transported until further orders from the owner, the carrier's liability is that of a warehouseman or bailee only. *Id.* (704, 705).

**STORAGE CHARGES.**

On pig iron arriving at Hoboken, N. J., no request made for unloading after notice of arrival. Held in cars pending arrival of vessel and subsequently unloaded by carrier to release equipment, and ultimately exported. *Held*: Storage charges based upon demurrage charges for period subsequent to unloading found unreasonable. *Reparation awarded. Naylor & Co. v. D., L. & W. R. R. Co.*, 397.

Shipments of steel rails refused and stored on defendant's right of way at Twin Falls, Idaho. *Held*: Storage charges assessed found legally applicable but unreasonable to extent they exceeded \$1 per car per day following *Parry & Co.*, 29 I. C. C., 559, and *Levering Bros.*, 38 I. C. C., 349. *Perrine v. O. S. L. R. R. Co.*, 400.

Reduced storage charge became effective after the period of storage began. *Held*: Following *Roy & Roy Mill Co.*, 44 I. C. C., 523, and *Conference Ruling 473*, reduced storage rate not applicable to shipments here involved. *Id.* (401).

Adjustment of, with respect to the different and changing conditions at each station in the country, impracticable and unnecessary. *Id.* (402).

**STORAGE IN TRANSIT. See TRANSIT ARRANGEMENTS.****STRANGER TO THE RECORD. See PARTIES.****STRIKES. See DELAY.****SUBSEQUENTLY ESTABLISHED RATES. See REDUCTION IN RATES (BY CARRIERS).****"SUBSTANTIAL COMPLIANCE."**

No hard and fast rule can be laid down as to what constitutes, with the requirements of a tariff, and its determination must be guided to some extent by the circumstances surrounding the transaction. *Steinhardt & Kelly v. E. R. R. Co.*, 304 (306).

**SUBSTITUTION OF TONNAGE.**

Transit rule under which each outbound shipment must contain a substantial portion of the variety of lumber shown on the inbound billing, not observed. *Lumber Transit Privileges at Buffalo, N. Y.*, 31 (38).

## SUPPLEMENTAL REPORT.

In original report, 41 I. C. C., 753, reparation awarded but proper certification not furnished by the necessary defendants. Reparation due under original finding and parties entitled thereto determined herein. *Western Carolina Lumber & Timber Asso. v. S. Ry. Co.*, 28.

Original report, 48 I. C. C., 201, in which maximum rates on cement within western trunk line, and between western trunk line and adjacent territories, were prescribed, modified. *Western Cement Rates*, 225.

Upon reconsideration, *Held*: Maximum rates 1 cent higher than prescribed in original report, 50 I. C. C., 327, on mine props from points in Delaware, Maryland, and Virginia, to Shenandoah, Pa., and points taking same rates, prescribed. *Virginia Pine Timber Co. v. N. Y., P. & N. R. R. Co.*, 249.

Defendants advanced rates, maintaining differential to conform with Commission's finding in original report, 40 I. C. C., 291. Advanced rates suspended and subsequently became effective. *Held*: Reparation for loss of trade and reduction in profits during interim, denied. *Kerr & Co. v. S. S. Ry. Co.*, 287.

Findings in original report, 51 I. C. C., 598, modified with respect to legally applicable rates on liquid petrolatum from Richmond, Calif., to Portland, Oreg., and other interstate destinations, and adjustment of charges directed on basis herein set forth. *Standard Oil Co. (California) v. A., T. & S. F. Ry. Co.*, 525.

Rates on pig iron from southern blast furnaces to Ohio River crossings and to certain points in c. f. a. territory between April 17, 1910, and October 1, 1914, were unreasonable to extent of 35 cents per long ton. Reparation awarded. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 576 (578).

## SUSPENSION.

Tariffs readjusting rates suspended by Commission. Contention that had they been permitted to become effective the present complaint would have had no cause of action, *Held*: Suspension did not abrogate the requirements of the law applicable to rates actually in effect during period involved. *Graustein v. B. & M. R. R.*, 269 (272).

Reduced rates proposed in a tariff which also named advances were suspended, and became effective following *Sulphuric Acid from New Orleans*, 42 I. C. C., 200, *Held*: Rates charged during interim unreasonable to extent they exceeded those subsequently effective. Reparation awarded. *Aetna Explosives Co. v. Director General*, 505.

SWITCHING. *See also* INTERCHANGE SWITCHING.

A switching service, especially where congestion prevails, is more expensive than a road haul for a like distance. *Stielow Bros. Co. v. C. & N. W. Ry. Co.*, 339 (342).

## SWITCHING CHARGES.

Between complainant's plant and defendant's connection with the C. & N. W. in Waukesha, Wis., increased from flat charge per car to charge upon a weight basis due to advance in costs, found justified. *Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co.*, 503.

SWITCHING DISTRICT. *See* CHICAGO SWITCHING DISTRICT.

## TANK CARS.

Allegation that charges on new empty tank cars, on their own wheels, from Milton, Pa., and North St. Louis, Mo., to Chanute, Kans., and Cushing, Okla., and tariff rule providing for billing at regular tariff rates, when moved empty to home or loading point, were unreasonable and unduly prejudicial, *Held*: Not sustained. *Chanute Refining Co. v. A., T. & S. F. Ry. Co.*, 593.

**TAP LINE.** *See also* **SHORT LINE.**

On hardwood logs originating at Grangeville Junction, La., on the New Orleans, Natalbany & Natchez Ry., and moving locally from Natalbany, La., the trunk line junction, to Memphis, Tenn., via the Illinois Central R. R., *Held*: Complainant not entitled to a divisional allowance out of the local rates from the junction. *New Orleans, Natalbany & Natchez Ry. Co. v. I. C. R. R. Co.*, 429.

**TARIFF.**

No hard and fast rule can be laid down as to what constitutes a substantial compliance with the requirements of a tariff, and its determination must be guided to some extent by the circumstances surrounding the transaction. *Steinhardt & Kelly v. E. R. R. Co.*, 304 (306).

**TARIFF CIRCULAR.** *See* **ADMINISTRATIVE RULING.****TARIFF RULE.** *See also* **LOSS AND DAMAGE.**

Tariff rule providing for application of 15 per cent of appropriate class rates from Clifton, Ariz., to El Paso, Tex., on shipments of returned empty beer containers from Clifton to original consignor of the filled containers, at St. Louis, Mo., construed. *Anheuser-Busch Brewing Assn. v. C., R. I. & P. Ry. Co.*, 555.

**TEAM TRACKS.**

Defined. *Bills of Lading*, 671 (715).

**TERMINALS.**

The Chicago stockyards are the terminals for receipt and delivery of live stock of the railroad utilizing them. *Live Stock Loading and Unloading Charges*, 209 (224).

**THROUGH AND LOCAL.** *See also* **SECTION 4.**

Rates on cotton piece goods, any quantity, from Boston, Mass., and other eastern points to Little Rock, Ark., exceeded the aggregate of intermediate rates to and from Memphis, Tenn. Reparation awarded. *Doyle Kidd Dry Goods Co. v. C., R. I. & P. Ry. Co.*, 18.

Through rates legally applicable on logging engines from Portland, Oreg., to Vancouver, British Columbia, exceeded the aggregate of intermediate rates to and from Seattle, Wash. Reparation awarded. *Portland Traffic & Transp. Assn. v. C. P. Ry. Co.*, 187.

Rates on scrap steel rails from New Orleans, La., to Huntington, W. Va., exceeded the aggregate of intermediate rates to and from Lexington. Reparation awarded. *West Virginia Rail Co. v. S. Ry. Co.*, 419.

Rates on nitrate of soda from Norfolk, Va., to Gibbstown, N. J., exceeded the aggregate of intermediate rates in effect to and from Paulsboro. Reparation awarded. *Du Pont De Nemours & Co. v. N. Y., P. & N. R. R. Co.*, 384.

Rates on lumber and articles taking same rates and on box lumber or shooks, heading, hoops, and staves from New Orleans, La., to Texas destinations exceeded the aggregate of intermediate rates to and from Harvey. Reparation awarded. *New Orleans Joint Traffic Bureau v. K. C. S. Ry. Co.*, 488.

A through rate in excess of the aggregate of intermediate rates is unreasonable. *Id.* (490).

Charges on crude clay in bulk from Buffalo Gap, S. Dak., to Des Moines, Iowa, exceeded the aggregate of intermediate rates and applicable minima to and from Blair, Nebr., in effect from Evans Quarry, S. Dak., a farther distant point, to Des Moines. Reparation awarded. *Refinite Co. v. C. & N. W. Ry. Co.*, 548.

Fourth section applications seeking authority to maintain class and commodity rates between Natchez, Miss., and Texas points higher than aggregate of intermediate rates, denied. *Natchez Chamber of Commerce v. A. H. T. Ry. Co.*, 558 (574).

**THROUGH AND LOCAL—Continued.**

Rates on vehicle parts from trunk line and New England territories to Rock Hill, S. C., exceeded the aggregate of intermediate rates to and from Norfolk and other Virginia cities. Reparation denied. *Rock Hill Buggy Co. (Inc.) v. S. Ry. Co.*, 583 (586).

**THROUGH RATES.**

Failure of carriers to accord Natchez joint rates and specific through rates to and from western Louisiana and southern Arkansas points in such manner and to the same extent as between western Louisiana points and between western Louisiana and southern Arkansas points found to subject Natchez to undue prejudice. *Natchez Chamber of Commerce v. L & A. Ry. Co.*, 105 (128).

**THROUGH ROUTES AND JOINT RATES.**

Establishment of through routes and joint rates on classes and commodities other than gasoline between points on complainant's line and Kansas City and St. Louis, Mo., and points taking the same rates, not justified. *Union Traction Co. v. A., T. & S. F. Ry. Co.*, 281 (285).

Plasterco, Tex., found entitled to through routes and joint rates on cement plaster to points on the Rock Island which do not exceed by more than 5 cents the rates from Acme and Okeene, Okla., and to other interstate destinations not in excess of rates from Acme, Tex. *Texas Cement Plaster Co. v. A., T. & S. F. Ry. Co.*, 293 (297).

**TIDEWATER DEMURRAGE. See DEMURRAGE.****TON MILE REVENUE. See REVENUE.****TONNAGE. See VOLUME OF TRAFFIC.****TRACK STORAGE CHARGES. See DEMURRAGE.****TRACKE ARRANGEMENTS.**

None of the line haul carriers reaches the Chicago stock yards with its own rails, but all utilize the tracks of the Chicago Junction Railway, for which they pay a trackage charge. *Live Stock Loading and Unloading Charges*, 209 (218).

**TRAIN CREWS.**

No more obligation upon a railroad company to furnish train crews particularly skilled in the handling of live stock than there is to furnish crews particularly skilled in the handling of lumber, grain, or any other commodity. *Live Stock Loading and Unloading Charges*, 209 (218).

**TRAIN SERVICE.**

Contention that the train service furnished complainant in the transportation of milk to Boston, Mass., from Vergennes and Brandon, Vt., was unduly preferential to her competitors and prejudicial to complainant, not sustained. *Graustein v. B. & M. R. R.*, 269 (270, 278).

**TRANSFER.**

If it has been necessary to recoop any cases of eggs during transportation or to transfer a carload from one car to another, or if the load or any part of it has shifted, or if any cases show external evidence of damage, the consignee should be accorded an inspection of all cases necessary to determine condition of shipment, and receipt should be given in accordance therewith. *National Poultry, Butter & Egg Asso. v. N. Y. C. R. R. Co.*, 47 (60).

**TRANSIT ARRANGEMENTS. See also STOPPAGE IN TRANSIT.**

In General: Transit services, among other disadvantages to the carriers, involve uncertainty, delay, and not inconsiderable expense in readjustment of earnings. *Lumber Transit Privileges at Buffalo, N. Y.*, 31 (38).

**TRANSIT ARRANGEMENTS—Continued.**

Compression: On compressed cotton from New Orleans, La., to Seattle, Wash., for export, rate included charge for compressing. Subsequently lower rate established on cotton compressed before delivery. *Held*: Rate collected legally applicable but unreasonable, to extent it exceeded rate subsequently established. Reparation awarded. *Duckworth Co. v. I. C. R. R. Co.*, 323.

**Milling:**

Rates and regulations on grain originating in c. f. a. territory, from points on the Harrisonburg branch of the Southern Railway, there milled and re-shipped to Carolina territory, higher than from Lynchburg, Va., alleged unduly prejudicial, dismissed. *Harrisonburg Milling Co. v. A. A. R. R. Co.*, 63 (68).

Conclusion in 41 I. C. C., 29, and 47 I. C. C., 263, that complainant is subjected to unjust discrimination by maintenance of a charge of 2 cents for milling wheat in transit at Great Falls, Mont., as compared with eastern and western termini mills, affirmed on rehearing. *Royal Milling Co. v. G. N. Ry. Co.*, 151.

Competition in grain and flour is national in scope, and transit should not be regarded merely from the standpoint of service performed at any particular point. *Id.* (153).

Storage and inspection: Petition for increased divisions of rates on shipments of lumber, originating south of the Ohio or west of the Mississippi and stopped at Buffalo, East Buffalo, Black Rock, or North Tonawanda, N. Y., for transit service and reconsignment, denied. *Lumber Transit Privileges at Buffalo, N. Y.*, 31 (38).

**TRANSPORTATION.**

Holding of Supreme Court as to when transportation of live stock begins. *Live Stock Loading and Unloading Charges*, 209 (217).

Power of Commission to require carriers to furnish transportation "upon reasonable request therefor" is not brought in issue by the establishment of a new classification of articles which carriers definitely hold themselves out to transport. *Rates on Lumber and Lumber Products*, 598 (603).

Construction of term, by the courts, as used in section 1. *Bills of Lading*, 671 (699). Carrier's legal obligations are confined to transportation and duties incident thereto, and it is not obligated to assume risks for convenience of consignor which have no direct relationship to its service of transportation. *Id.* (722).

Word "transportation" as used in the act construed as to interstate and foreign commerce. *Id.* (729).

**TRANSHIPMENT.**

Demurrage rules applicable in 1915 and 1916, on shipments of lake cargo coal held at ports on Lake Erie, awaiting transshipment by water, not shown unreasonable because they limited the period for averaging debits and credits to less than the entire season of navigation. *Cabin Creek Consolidated Coal Co. v. C., H. & D. Ry. Co.*, 181 (183).

**TWO CARS.**

Rates on poles and piling, too long to be loaded on a single car, from the north Pacific coast and the inland empire, should take no higher rates than are applied on fir lumber in single carloads. *Rates on Lumber and Lumber Products*, 598 (627, 628).

**UNIFORM BILL OF LADING. See also BILL OF LADING; EXPORT BILL OF LADING.**

Investigation concerning, in which uniform export and domestic bills were prescribed by the Commission. *Bills of Lading*, 671.

Previous efforts to bring into use. *Id.* (686).

UNIFORM CLASSIFICATION. *See* CLASSIFICATION; LUMBER LIST.  
 UNION STOCKYARD & TRANSIT CO.

Common carrier engaged in interstate commerce and subject to the provisions of the act. Live Stock Loading and Unloading Charges, 209 (215, 222, 223).

#### UNIT.

Millwork, built-up wood, and silo material load lighter per unit of space than lumber, and on this account ought to be accorded higher rates. Rates on Lumber and Lumber Products, 598 (616).

#### "UPON REASONABLE REQUEST THEREFOR."

Power of Commission to require carriers to furnish transportation "upon reasonable request therefor" is not brought in issue by the establishment of a new classification of articles which carriers definitely hold themselves out to transport. Rates on Lumber and Lumber Products, 598 (603).

#### VAIN ACT.

Setting out a car of coal for 24 hours at Barnegat, N. J., was performed as an overt act of delivery in order to indicate that there the service as common carrier ended, and that movement thence to Tuckerton, N. J., would be made by complainant as owner handling its own material. *Held*: The law does not require a vain thing. Tuckerton R. R. Co. v. P. R. R. Co., 319.

#### VALUATION. *See* VALUE OF PROPERTY.

#### VALUE. *See also* CUMMINS AMENDMENT; RELEASED RATES.

While average value of articles grouped under agricultural implement and vehicle material, especially spokes, is higher than that of lumber, their values come within the range of values of lumber, and therefore should not be accorded higher rates than lumber. Rates on Lumber and Lumber Products, 598 (606).

Differences in, certainly permit of a constant rate relationship. *Id.* (606).

Differences in value between veneer of different thicknesses are not such as to justify different rates. *Id.* (613).

Is a factor in classification. *Id.* (615).

Rather than reflect value in a rate relationship between lumber and lumber products this element should be considered only in fixing the basic lumber rate and its relationship to rates on commodities not so intimately related to lumber. *Id.* (615).

Not a determinative factor in the classification of lumber and lumber products. *Id.* (617).

The fact that the rate relationship of lumber and lumber products should be based upon their relative car loading does not lead to the conclusion that value and risk should never be regarded as determinative classification factors. *Id.* (617).

Value and risk in most instances do not afford a basis for a differentiation in rates between lumber and most lumber products. *Id.* (618).

#### VALUE OF PROPERTY.

A reasonable rate may not be based upon consideration only of the value of the property owned and used by an express company. Public Service Commission of Washington v. American Ry. Express Co., 266 (268).

Justification for increased fares, based upon the theory that carriers are entitled to a reasonable return on the value of property, cannot be accepted by the Commission. Louisville Passenger Fares, 366 (368-369).

#### VOLUME OF TRAFFIC.

Statement showing number of pounds of l. c. l. freight handled between certain Louisiana points. Natchez Chamber of Commerce v. L. & A. Ry. Co., 105 (120).

#### VOLUNTARY REDUCTION. *See* REDUCTION IN RATES (BY CARRIERS).

**WAR.**

Western Kentucky coal found market at Cincinnati, Ohio, during abnormal conditions due to the war, and under a proper adjustment of rates it will find a market there during normal times. *Ohio Valley Coal Operators' Asso. v. L. & N. R. R. Co.*, 187 (192).

Value of cottonseed-hull shavings increased as a result of their use as a substitute for cotton linters in the manufacture of explosives, the supply of which became inadequate due to the war. *Du Pont de Nemours & Co. v. P., C., C. & St. L. R. R. Co.*, 533 (535).

**WAREHOUSEMAN.**

The bills of lading act contains no provision respecting transition from liability of a common carrier to that of a warehouseman. *Bills of Lading*, 671 (696).

Carriers common-law liability should cease and become that of a warehouseman only, if consignee does not remove goods within a reasonable time after delivery. *Id.* (701).

Proposed clause making carrier's liability as warehouseman for loss, damage, or delay caused by fire, dependent upon the sending or giving of notice of arrival, and not upon a delivery, or tender of delivery, should be removed and clause changed in manner herein provided. *Id.* (702).

When goods are merely delivered to a carrier or deposited in its warehouse and are not to be transported until further orders from the owner, the carrier's liability is that of a warehouseman or bailee only. *Id.* (704, 705).

Section 4, clause 1, general liability of carrier as warehouseman, after 48 hours.

Proposed rule to relieve the carriers from liability for safe-keeping of goods when sent to public or licensed warehouse after expiration of free time, not approved, and rule in lieu thereof suggested by the Commission. *Id.* (712-713).

Duty to give notice to consignor when shipment refused can only arise when carrier is required to make personal delivery, it has no application to railroads when goods are to be deposited in warehouse to await call, and failure as warehouseman to give such notice not such negligence as to make them liable for any loss caused thereby. *Id.* (719-720).

Proposed rule of export bill of lading exempting carrier from liability for delay, and reduction of liability to that of warehouseman, while the property is awaiting further conveyance, disapproved and rule suggested should be adopted. *Id.* (737-738).

**WATER-AND-RAIL. See RAIL-AND-WATER.****WATER CARRIERS. See also BOAT LINES.**

Principal Congressional statutes affecting rights and liabilities of water carriers, cited. *Bills of Lading*, 671 (724).

Section 9, clauses 1, 2, 3, 4, 5, and 6, limitation of liability of water carriers. Proposed rule exempting from liability carriers by water when participating in transportation subject to the act would be in contravention of the Cummins amendment, and is therefore null and void. Rule disapproved. *Id.* (723-726).

Provisions of sections 1, 5, and 6 clearly bring, within operation and control of the act, when they participate in arrangements for continuous shipment and carriage. *Id.* (724-725).

**WATER COMPETITION. See COMPETITION.****WEAK LINES.**

Louisiana & Arkansas Railway and Louisiana & North West Railroad permitted to charge higher interstate rates than standard lines. *Natchez Chamber of Commerce v. L. & A Ry. Co.*, 105 (129).



**WEATHER INTERFERENCE.**

Owing to the frozen condition of bituminous coal arriving at Elizabeth, N. J., defendants were unable to unload and complainant withdrew its barges. Others subsequently placed and the coal ultimately unloaded. *Held*: Demurrage charges collected under tidewater average plan found illegal for period during which barges were at the pier, registered and ready to receive coal. Reparation awarded. *Hite & Rafetto v. C. R. R. Co. of N. J.*, 344.

**WEIGHT. See also MINIMUM WEIGHT.**

Discontinuance of an allowance for reduction in weight due to leakage and evaporation of moisture from brewers' wet grain in transit, found justified. *Farmers Feed Co. v. E. R. R. Co.*, 317.

Carriers duty to collect and shippers duty to pay freight charges based upon correct, not estimated weights. *Bills of Lading*, 671 (694).

Burden of proof to show what is correct weight depend upon which of the parties, carrier or shipper, is responsible for the accuracy of the weights. *Id.* (694).

**WHAT TRAFFIC WILL BEAR.**

Rates made without the observance of any particular rate relationship permit more readily the charging in each particular instance of what the traffic can bear, irrespective of the reasonableness of the charge, but that is obviously not a result which it is desirable to promote. *Rates on Lumber and Lumber Products*, 598 (612).

Ability of one commodity to bear a greater share of transportation costs than another is in most cases independent of the length of the haul. *Id.* (617).







